



CONTRACT FOR SERVICE

CONTRACT NO. 13-90-12420



SOFTWARE, MAINTENANCE AND TECHNICAL SUPPORT

FOR

COOK COUNTY CLERK OF THE CIRCUIT COURT

WITH: IBM CORPORATION

**BOARD OF COMMISSIONERS
COUNTY OF COOK
TONI PRECKWINKLE**

**ISSUED BY THE
OFFICE OF THE CHIEF PROCUREMENT OFFICER**

107161

CONTRACT FOR SERVICE
PART I
AGREEMENT

This CONTRACT is made and entered into by and between the County of Cook, a public body corporate of the State of Illinois, hereinafter the "County" and **IBM CORPORATION**, hereinafter the "Contractor".

WHEREAS, the County is responsible for procuring services **COOK COUNTY CLERK OF THE CIRCUIT COURT**(hereinafter the "Using Department");

WHEREAS, the Using Department requires the following services: **SOFTWARE, MAINTENANCE AND TECHNICAL SUPPORT**;

WHEREAS, the Contractor is able and willing to provide such services, hereafter referred to as the "Work Program" as required by the County, upon the terms and conditions hereinafter provided and in consideration for the fees set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual undertakings herein set forth, the parties agree as follows:

I. WORK PROGRAM

The Contractor agrees to perform the following services:

AS SET FORTH IN EXHIBITS "A" and "B"

II. CONTRACT TERM AND RENEWAL TERMS

This Contract shall be for twelve (12) months effective after proper execution of the Contract by the County and shall include two (2) one (1) year options to renew. The options to renew are subject to the following terms: Seventy-five (75) days prior to the termination of the initial contract term or any subsequent renewal period, the Contractor shall provide written notice to the attention of the Chief Information Officer of the Cook County Clerk of the Circuit Court, of the impending contract expiration and a quote listing the price to be paid for services during the renewal term. Thereafter, the County shall determine whether to renew the Contract for an additional year and provided notice to the Contractor no later than thirty (30) days prior to the expiration of the term.

III. PAYMENT

All charges shall not exceed the amount of \$67,000.00 and shall be paid in accordance with Exhibit "A." Invoices in triplicate on County Invoice Form 29A shall be, submitted by the Contractor to the Using Department when requesting payment. The County shall have the right to examine the books of the Contractor for the purpose of auditing the same with reference to all charges made to the County.

In the event the Contractor receives payment under the Contract, reimbursement for which is later disallowed by the County, the Contractor shall promptly refund the disallowed amount to the County on request, or at the County's option, the County may credit the amount disallowed from the next payment due or to become due to the Contractor under any contract with the County.

IV. GENERAL CONDITIONS

This Contract incorporates and is subject to the provisions attached hereto as Part II, General Conditions, and Contract for Service and is incorporated herein by this reference. Contractor's attention is specially directed to GC-01, Subcontracting or Assignment of Contract Funds.

V. EXHIBITS

This Contract incorporates the following Contractor Documentation:

1. Exhibit "A" IBM Quote
2. Exhibit "B" IBM Passport Advantage Agreement
3. Exhibit "C" IBM Confidentiality Terms

Notwithstanding such incorporation, none of the terms set forth in any Exhibit which conflicts with the express terms of this Contract or its General Conditions shall be deemed or construed to supersede the terms of this

SPECIFICATIONS AND AGREEMENT

The undersigned declares that he has carefully examined the Agreement Form, General and Special Conditions and Specifications identified as Contract no. 13-90-12420 for **SOFTWARE, MAINTENANCE AND TECHNICAL SUPPORT** for **COOK COUNTY CLERK OF THE CIRCUIT COURT**, as prepared by Cook County and that he has familiarized himself with all of the conditions under which it must be carried out and understands that by this agreement he waives all right to plead any misunderstanding regarding the same.

| <u>ITEM NO.</u> | <u>UNIT OF MEASURE</u> | <u>QTY.</u> | <u>DESCRIPTION</u> |
|-----------------|------------------------|-------------|--|
| 1. | YEAR | 1 | SOFTWARE, MAINTENANCE AND TECHNICAL SUPPORT AS PER EXHIBIT "A" HEREIN. |

**GRAND TOTAL
NOT TO EXCEED: \$67,000.00**

**GENERAL CONDITIONS
SUPPLY/SERVICE**

GC-01 SUBCONTRACTING OR ASSIGNMENT OF CONTRACT OR CONTRACT FUNDS

Except for the assignment of its rights to payments without obtaining the County's consent, once awarded, this Contract shall not be subcontracted or assigned, in whole or in part, without the advance written approval of the Chief Procurement Officer, which approval shall be granted or withheld at the sole discretion of the Chief Procurement Officer. In no case, however, shall such approval relieve the Contractor from its obligations or change the terms of the Contract. The Contractor shall not transfer or assign any Contract funds or any interest therein due or to become due without the advance written approval of the Chief Procurement Officer. The unauthorized subcontracting or assignment of the Contract, in whole or in part, or the unauthorized transfer or assignment of any Contract funds, either in whole or in part, or any interest therein, which shall be due or are to become due the Contractor shall have no effect on the County and are null and void.

Prior to the commencement of the Contract, the Contractor shall identify in writing to the Chief Procurement Officer the any and all subcontractors it intends to use in the performance of the Contract. The Chief Procurement Officer shall have the right to disapprove any subcontractor. Identification of subcontractors to the Chief Procurement Officer shall be in addition to any communications with County offices other than the Chief Procurement Officer. All subcontractors shall be subject to the terms of this Contract. Contractor shall incorporate into all subcontracts all of the provisions of the Contract which affect such subcontract. Copies of subcontracts shall be provided to the Chief Procurement Officer upon request.

The Contractor must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Contractor has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the contractor's regular payroll. "Lobbyist" means any person or entity who undertakes to influence any legislation or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2), himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action. If the Contractor is uncertain whether a disclosure is required under this Section, the Contractor must either ask the County, whether disclosure is required or make the disclosure.

The County reserves the right to prohibit any person from entering any County facility for any reason. All contractors and subcontractors of the Contractor shall be accountable to the Director of the Using Department or his designee while on any County property and shall abide by all rules and regulations imposed by the County.

GC-02 PERSONNEL

The quality, experience and availability of personnel employed by the Contractor is of the essence. The Contractor shall be fully responsible to County for all work performed pursuant to this Contract by Contractor's employees, subcontractors or others who may be retained by the Contractor with the approval of the County.

GC-03 INSURANCE REQUIREMENTS

- 1) The Contractor shall require all policies of insurance that are related to the work and are secured and maintained by Contractor and all tiers of subcontractors.
- 2) The Contractor shall waive all rights of recovery against Cook County, Board of Commissioners, employees of the County and other Contractors and subcontractors which Contractor may have or acquired because of deductible clauses in or inadequacy of limits of any policies of insurance that are related to the work and that are secured and maintained by Contractor.
- 3) The Contractor shall require all tiers of subcontractors to waive the rights of recovery against Cook County and all tiers of subcontractors.

Insurance Requirements of the Contractor

Prior to the effective date of this Contract, the Contractor, at its cost, shall secure and maintain at all times, unless specified otherwise, until completion of the term of this Contract the insurance specified below.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Contract. The insurance purchased and maintained by the Contractor shall be primary and not excess or pro rata to any other insurance issued to the County.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The limits of liability shall be as stated below, unless, prior to the effective date of this Contract, written approval is granted by the Cook County Department of Risk Management for variance from those limits.

1. Coverages

(a) Workers Compensation Insurance

Workers' Compensation shall be in accordance with the laws of the State of Illinois or any other applicable jurisdiction.

The Workers Compensation policy shall also include the following provisions:

- 1) Employers' Liability coverage with a limit of
\$500,000 each Accident
\$500,000 each Employee
~~\$500,000 Policy Limit for Disease~~
- 2) Broad form all states coverage

GC-03 INSURANCE REQUIREMENTS (CON'T.)

(b) **Commercial General Liability Insurance**

- 1) The Commercial General Liability shall be on an occurrence form basis to cover bodily injury and property damage including loss of use.

General Liability limits shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit for bodily injury and property damage. The General Liability policy shall include, without limitation the following coverages:

- (a) All premises and operations;
- (b) Broad Form Blanket Contractual Liability;
- (c) Products/Completed Operations;
- (d) Broad Form Property Damage Liability;
- (e) Cross Liability.

(c) **Comprehensive Automobile Liability Insurance**

Comprehensive Automobile Liability to cover all owned, non-owned and hired automobiles, trucks and trailers. The Comprehensive Automobile Liability limits shall not be less than the following:

- 1) Liability - All Autos: Bodily Injury & Property Damage - \$1,000,000 per Occurrence
- 2) Uninsured/Motorists: Per Illinois Requirements

(d) **Umbrella/Excess Liability Insurance**

In addition to the coverages and limits specified above, Contractor and Sub-Contractors of any tier shall secure and maintain a limit of liability no less than:

- 1) \$2,000,000 each occurrence for all liability
- 2) \$2,000,000 in the aggregate per policy year separately with respect to products and completed operations

2. Additional requirements

(a) **Additional Insured**

Cook County, its officials, employees and agents shall be named as additional insureds under the Commercial General Liability policy.

(b) **Qualification of Insurers**

All insurance companies providing coverage shall be licensed or approved by the Department of Insurance, State of Illinois, and shall have a financial rating no lower than (A-) VII as listed in A.M. Best's Key Rating Guide, current edition or interim report. Companies with ratings lower than (A-) VII will be acceptable only upon written consent of the Cook County Department of Risk Management.

GC-03 INSURANCE REQUIREMENTS (CON'T.)

(c) **Insurance Notices**

Contractor shall notify the Cook County Office of the Chief Procurement Officer, 118 North Clark Street, Room 1018, Chicago, Illinois 60602 at least 30 days prior to the effective date of any cancellation of such policies. Prior to the date on which Contractor commences performance of its part of the work, Contractor shall furnish to the County certificates of insurance maintained by Contractor.

In no event shall any failure of the County to receive Certificates of Insurance required hereof or to demand receipt of such Certificates of Insurance be construed as a waiver of Contractor's obligations to obtain insurance pursuant to these insurance requirements.

GC-04 INSPECTION AND RESPONSIBILITY

At any and at all times during the term of the Contract and at any location where the Contract is performed, the County shall have a right to inspect any Deliverables provided in carrying out this Contract. The Contractor shall be solely responsible for the quality and standards of all Deliverables furnished under this Contract. Deliverables may be rejected by the Chief Procurement Officer and/or the Director of the Using Department if they fail to meet Contract requirements or are provided in a manner which does not meet Contract requirements. Any Deliverables rejected shall be removed within a reasonable time from the premises of the County at the entire expense of the Contractor, after notice has been given by the County to the Contractor that such Deliverables have been rejected.

GC-05 INDEMNIFICATION

The Contractor covenants and agrees to indemnify and save harmless the County and its commissioners, officials, employees, agents and representatives, and their respective heirs, successors and assigns, from and against any and all damages or liability to third parties for personal injury or damage to real property to the extent caused solely by the vendor while performing this Contract. In the event such a damages claim is made against the County or anyone named herein arising out of Contractor's performance of this Contract, the County shall immediately notify Contractor and allow Contractor to participate and control the defense of the claim if Contractor so elects

GC-06 PAYMENT

All invoices submitted by the Contractor shall be in accordance with the cost provisions contained in the Contract Documents and shall contain a detailed description of the Deliverables for which payment is requested. All invoices shall reflect the amounts invoiced by and the amounts paid to the Contractor as of the date of the invoice, and shall be submitted together with a properly completed County Voucher form (29A). Invoices for new charges shall not include "past due" amounts, if any, which amounts must be set forth on a separate invoice. No payments shall be made with respect to invoices which do not include the County Voucher form or which otherwise fail to comply with the requirements of this paragraph. ~~Contractor shall not be entitled to invoice the County for any late fees or other penalties. "The parties understand that for certain transactions payment may be made directly to Contractor's financing entity."~~

GC-07 PREPAID FEES

In the event this Contract is terminated by either party, for cause or otherwise, and the County has prepaid for any Deliverables, Contractor shall refund to the County, on a prorated basis to the effective date of termination, all amounts prepaid for Deliverables not actually provided as of the effective date of the termination. The refund shall be made within fourteen (14) days of the effective date of termination.

GC-08 TAXES

Federal Excise Tax does not apply to materials purchased by the County by virtue of Exemption Certificate No. 36-75-0038K. Illinois Retailers' Occupation Tax, Use Tax and Municipal Retailers' Occupation Tax do not apply to deliverables, materials or services purchased by the County by virtue of statute. The price or prices quoted herein shall include any and all other federal and/or state, direct and/or indirect taxes which apply to this Contract. The County's State of Illinois Sales Tax Exemption Identification No. is E-9998-2013-05.

GC-09 PRICE REDUCTION

[Intentionally Omitted]

GC-10 CONTRACTOR CREDITS

To the extent the Contractor gives credits toward future purchases of goods or services, financial incentives, discounts, value points or other benefits based on the purchase of the materials or services provided for under this Contract, such credits belong to the County and not any specific using department. Contractor shall reflect any such credits on its invoices and in the amounts it invoices the County.

GC-11 DISPUTES

Any dispute arising under the Contract between the County and Contractor shall be decided by the Chief Procurement Officer. The complaining party shall submit a written statement detailing the dispute and specifying the specific relevant Contract provision(s) to the Chief Procurement Officer. Upon request of the Chief Procurement Officer, the party complained against shall respond to the complaint in writing within five days of such request. The Chief Procurement Officer will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the Director of the Using Department. Dispute resolution as provided herein shall be a condition precedent to any other action at law or in equity. However, unless a notice is issued by the Chief Procurement Officer indicating that additional time is required to review a dispute, the parties may exercise their contractual remedies, if any, if no decision is made within sixty (60) days following notification to the Chief Procurement Officer of a dispute. No inference shall be drawn from the absence of a decision by the Chief Procurement Officer. Notwithstanding a dispute, Contractor shall continue to discharge all its obligations, duties and responsibilities set forth in the Contract during any dispute resolution proceeding unless otherwise agreed to by the County in writing.

GC-12 DEFAULT

Contractor shall be in default hereunder in the event of a material breach by Contractor of any term or condition of this Contract including, but not limited to, a representation or warranty, where Contractor has failed to cure such breach within thirty (30) days after written notice of breach is given to Contractor by the County, setting forth the nature of such breach.

In the event Contractor shall breach any material terms or conditions of this Contract on more than one occasion during any twelve month period during the term hereof, or in the event Contractor expresses an unwillingness or inability to continue performing the Contract in accordance with its terms, the County may, at its option, declare the Contractor to be in default and the County shall be entitled to exercise all available remedies including, but not limited to, termination of the Contract, without affording the Contractor further opportunity to cure such breach. Failure of County to give written notice of breach to the Contractor shall not be deemed to be a waiver of the County's right to assert such breach at a later time, should the Contractor commit a subsequent breach of this Contract.

County shall be in default hereunder if any material breach of the Contract by County occurs which is not cured by the County within thirty (30) days after written notice has been given by Contractor to the County, setting forth the nature of such breach. Notwithstanding the foregoing, if the breach involves the County's payment obligations, the cure period shall be ninety (90) days.

GC-13 COUNTY'S REMEDIES

Following notice of material breach to Contractor, the County reserves the right to withhold payments otherwise owed to Contractor until such time as Contractor has cured the breach.

If the Contractor fails to remedy a material breach during the thirty (30) day cure period pursuant to General Condition GC-12, Default, or if Contractor commits a subsequent material breach within a twelve month period or expresses an unwillingness or inability to continue performing the Contract in accordance with its terms, the County shall have the right to terminate this Contract upon written notice to the Contractor which shall set forth the effective date of such termination.

In addition, the County shall have the right to pursue all remedies in law or equity subject to the limits set forth in Exhibit B.

GC-14 CONTRACTOR'S REMEDIES

If the County has been notified of breach and fails to remedy the breach during the thirty (30), or ninety (90) days in the event there is a breach of the County's payment obligations pursuant to General Condition GC-12, Default, the Contractor shall have the right to terminate this Contract upon not less than thirty (30) days prior written notice to the County, which notice shall set forth the effective date of termination.

~~Contractor shall have the right to pursue all remedies available in law or equity. In all cases the Contractor's damages shall be those actual provable damages not to exceed the amount of the Contract as awarded by the Cook County Board of Commissioners less all amounts paid to Contractor. In no event shall Contractor be entitled to any consequential damages. Irrespective of the exercise of remedies hereunder, Contractor shall not disrupt the County's operations or repossess any component thereof.~~

GC-15 DELAYS

Contractor agrees that no charges or claims for damages shall be made by Contractor for any delays or hindrances not caused by the County during the progress of any portion of this Contract.

GC-16 MODIFICATIONS AND AMENDMENTS

The Chief Procurement Officer shall have the authority to execute amendments to contracts in an amount less than \$150,000.00, provided that any such amendment does not extend the Contract by more than one (1) year. However, Board approval shall be required for any procurement of the same or similar supplies, goods, equipment or services which would result in the aggregate amount of such procurements

from the same Contractor by the same Using Department is equal to or exceeds \$150,000.00. The "amount" of a Contract shall mean the maximum amount payable under such Contract.

No person has the power or authority to approve, authorize or execute an amendment to the Contract in the amount of \$150,000.00 or more without approval of the County Board

No County department or employee thereof has authority to make any modifications or amendments to this Contract. Any modifications or amendments to this Contract made without the express written approval of the Board, or where applicable, the Chief Procurement Officer is void and unenforceable.

GC-17 PATENTS, COPYRIGHTS AND LICENSES

See Exhibit B.

GC-18 COMPLIANCE WITH THE LAWS

The Contractor shall observe and comply with the laws, ordinances, regulations and codes of the Federal, State, County and other local government agencies which may in any manner affect the performance of the Contract including, but not limited to, those County Ordinances set forth in the Certifications attached hereto and incorporated herein. Assurance of compliance with this requirement by the Contractor's employees, agents or subcontractors shall be the responsibility of the Contractor.

The Contractor shall secure and pay for all federal, state and local licenses, permits and fees required hereunder.

GC-19 MINORITY AND WOMEN BUSINESS ENTERPRISES
COOK COUNTY ORDINANCE CHAPTER 10-43.7 PROFESSIONAL AND
CONSULTING SERVICE AND SOLE SOURCE

I. POLICY AND GOALS

- A. It is the policy of the County of Cook to prevent discrimination in the award of or participation in the County contracts and to eliminate arbitrary barriers for participation, as both prime and subcontractors, in such contracts by local businesses certified as Minority Business Enterprises (MBE) and Women- Owned Business Enterprises (WBE). In furtherance of this policy, the Cook County Board of Commissioners has adopted a Minority-and-Women-Owned Business Enterprise Ordinance (the "Ordinance") which establishes a "best efforts" goal of awarding not less than thirty-five percent (35%) of the annual total dollar amount of professional, consulting service and sole source contracts and agreements to certified MBEs and WBEs.
- B. A Proposer may achieve the MBE/WBE participation goals by its status as a MBE or WBE; by entering into a joint venture with one or more MBEs and/or WBEs; by subcontracting a portion of the work to one or more MBEs or WBEs; by entering into a Mentor-Protégé Agreement with a MBE or WBE; by the indirect participation of MBEs or WBEs in other aspects of the Proposer's business; or by a combination of the foregoing.

GC-19 MINORITY AND WOMEN BUSINESS ENTERPRISES
COOK COUNTY ORDINANCE CHAPTER 10-43.7 PROFESSIONAL AND
CONSULTING SERVICE AND SOLE SOURCE (CONT.)

- C. A Waiver Request must be submitted with the Proposal, documenting the inability of the Proposer to meet the goals, and providing written evidence of "Good Faith Efforts," to obtain goals.

- D. A Proposer's failure to carry out its MBE/WBE commitments in the course of performance on a contract shall constitute a material breach of the contract, and if such breach is not appropriately cured, may result in the termination of the contract or such other remedies authorized by the Ordinance as the County deems appropriate.

II. REQUIRED SUBMITTALS

To be considered responsive to the requirements of the Ordinance, a Proposer shall submit Items A, B and C listed below. All documentation submitted shall be reviewed by the Contract Compliance Administrator. Failure to submit one of the items required shall be cause to consider a contract non-responsive to the Ordinance goals and may be rejected.

A. MBE/WBE Participation Documentation

Each Proposer shall submit supporting documentation which evidences efforts taken to achieve the County's "best efforts" MBE/WBE participation goals. Such documentation shall include:

1. A **Utilization Plan** identifying all firms intended to be utilized to fulfill the goals; the MBE/WBE status of each firm; the name, address, e-mail address and telephone number of the contact person for each MBE/WBE firm; the dollar value of the goods and services to be provided by the MBE/WBE firm; and the dollar value expressed as a percentage (%) of the total value of the purposed contract. (See Section I)
2. A **Letter of Intent** for each MBE/WBE containing specific information regarding goods to be provided or services to be performed by the MBE/WBE; the dollar value of the goods or services, the percentage (%) of the dollar value; and the original signatures of the appropriate officer for both the Proposer and the MBE/WBE. (See Exhibit II)
3. Current **Letter of Certification** for each MBE/WBE firm. Acceptable certifying agencies are: Cook County, Illinois Unified Certification Program (IUCP) and U. S. Small Business Administration. (SBA) (8A) or any other governmental body or agency approved by the Contract Compliance Administrator as applying certification standards substantially similar to those applied by the County of Cook may also be accepted.
4. **Waiver/Goal Reduction Petition** must be included at the time of the submission of the Proposal document. ~~Where the Proposer does not include all~~ documentation in support of the Petition at the time of submission, such documentation must be submitted to the Office of Contract Compliance not less than three (3) business days after the submission date.

GC-19 **MINORITY AND WOMEN BUSINESS ENTERPRISES**
COOK COUNTY ORDINANCE CHAPTER 10-43.7 PROFESSIONAL AND
CONSULTING SERVICE AND SOLE SOURCE (CON'T.)

The Contract Compliance Administrator retains the right to reject the certification of any MBE or WBE on the ground that it does not meet the County's definition of a MBE or WBE.

B. **Use of MBE/WBE Professionals**

Each Proposer shall submit with its proposal, a statement which discloses how it intends to maximize the use of minority and women professionals in the course of performing the contract.

C. **Affirmative Action Plan**

Each Proposer shall submit a copy of its current EEO-1 Report and a copy of its current Letter of Compliance from the United States Department of Labor, Office of Federal Contract Compliance Programs. Absent a Letter from OFCCP, the Proposer shall submit a written report of the inclusion of minority and women professional in the workforce of their company.

III. **NON-COMPLIANCE**

Where the County of Cook determines that the Proposer has failed to comply with its contractual commitments or any portion of the Ordinance, it will notify the contractor of such non-compliance and may take any and all appropriate actions as set forth within the Ordinance.

IV. **REPORTING/RECORD KEEPING REQUIREMENTS**

The Proposer is required to comply with the reporting and record-keeping requirements as set forth in the Ordinance and as established by the Contract Compliance Administrator. Upon award of a contract, The Proposer is responsible for acquiring all necessary Office of Contract Compliance reporting and record-keeping forms as made available in the Office of Contract Compliance

The Office of Contract Compliance will notify each Contractor and Sub-Contractor upon award of a contract of their reporting obligations (Vendor Notification Letter)

The Office of Contract Compliance will notify each MBE/WBE Sub-Contractor of the award of a contract to a Prime Contractor, the MBE/WBE dollar amount of participation and the percentage (%) amount of participation. The Sub- Contractors will be required to submit on a timely basis, Sub-Contractors Payment Affidavits (see forms section) with proof of payment or money paid to them by the Prime Contractor.

GC-19 **MINORITY AND WOMEN BUSINESS ENTERPRISES**
COOK COUNTY ORDINANCE CHAPTER 10-43.7 PROFESSIONAL AND
CONSULTING SERVICE AND SOLE SOURCE (CON'T.)

The Office of Contract Compliance requests payment affidavits and proof of payment to MBE/WBE Sub-Contractors as follows:

1. **Annual Contracts:** monthly reporting from both Prime and Sub-Contractors.
2. **Multi Year Contracts:** quarterly reporting from both Prime and Sub-Contractors including proof of payments.
3. **One time purchases** require verification of proof of payment **immediately**.

Failure to comply with this section will be reviewed as non-compliance as stated under Section III. Non-Compliance.

V. **EQUAL EMPLOYMENT OPPORTUNITY**

Compliance with MBE and WBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as otherwise required by law as they relate to contractor and subcontractor obligations.

Any questions regarding this document should be directed to:

LaVerne Hall
Administrator
Cook County Office of Contract Compliance
118 N. Clark Street – Room 1020
Chicago, Illinois 60602
(312)603-5502

GC-20 **MATERIAL DATA SAFETY SHEET**

Where required under the Illinois "Toxic Substance Disclosure To Employees Act", Illinois Compiled Statutes, 2002, 820 ILCS 255/1, Contractor shall submit with each delivery of Deliverables, a Material Safety Data Sheet.

GC-21 **CONDUCT OF THE CONTRACTOR**

The Contractor agrees to inform the County on a timely basis of all of the Contractor's interests, if any, which are or which the Contractor reasonably believes may be incompatible with any interest of the County. The Contractor shall take notice of and comply with the Cook County Lobbyist Registration Ordinance (No. 93-0-22, 6-22-93). Neither the Contractor nor any of its employees, agents or subcontractors shall use for business or personal gain, or make other improper use of, confidential information which is acquired in connection with the Contract. To the extent Contractor will have access to the County's protected health information in performing its responsibilities under this Contract, Contractor shall contact the Chief Privacy Officer for the Using Department(s) and shall execute the County's business associate agreement prior to performing any responsibilities which involve access to protected health information.

GC-22 ACCIDENT REPORTS

The Contractor shall provide the Chief Procurement Officer and the Using Department with a written report within a reasonable time of an accident on the site which pertains in any way to this Contract and involves the Contractor's own personnel, or those of any of his subcontractors or others whether said occurrence be in nature of bodily injury to employees or third parties or property damage. In any event, Contractor will provide such a report within two business days after the IBM Project Manager has notice of the accident. The report shall include the name of person(s) injured, if any; name of the injured person's employer, if any; the date, time and location of the occurrence; description of the extent of injury and/or damage; the name(s) of witnesses; the names of any providers known to have provided treatment for injuries sustained; and such other information as may be required by the County. The Contractor shall notify the local police regarding any occurrence requiring an official police record. The report submitted to the County should indicate whether the police were notified and, if so, the number of the police report.

GC-23 USE OF COUNTY PREMISES AND RESOURCES

Contractor shall confer with the Director of the Using Department to ascertain full knowledge of all rules and regulations of the County facilities relative to this Contract and shall cause all of its employees, agents and subcontractors to comply therewith. The Contractor shall confine the operations of its employees, agents and subcontractors on County premises to the performance of the Contract consistent with limits indicated by laws, ordinances, permits and/or direction of the Director of the Using Department and shall not encumber the premises with materials or debris. In performing the Contract, the Contractor shall not cause or permit a condition that endangers the safety of others and shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any persons.

GC-24 TERMINATION FOR CONVENIENCE AND SUSPENSION OF CONTRACT

The County may terminate this Contract or any portion, at any time by notice in writing from the County to the Contractor. Payment for the work performed or initiated before the effective date of such termination shall be based upon the services/goods actually performed/supplied by the Contractor to the date of termination. Such payment so made to the Contractor shall be in full settlement for services rendered under this Contract.

GC-25 GENERAL NOTICE

All notices required pursuant to this Contract shall be in writing and addressed to the parties at their respective addresses set forth below. All such notices shall be deemed duly given if hand delivered or if deposited in the United States mail, postage prepaid, registered or certified, return receipt requested. Notice as provided herein does not waive service of summons or process.

TO THE COUNTY:

COOK COUNTY CHIEF PROCUREMENT OFFICER
118 North Clark Street, Room 1018
Chicago, Illinois 60602
(Include County Contract Number in all notices)

TO THE CONTRACTOR:

At address provided on the Execution Pages or as otherwise indicated in writing to County Chief Procurement Officer in a written document which, in bold face type, references the name of the Contractor, the County Contract Number and states "NOTIFICATION OF CHANGE IN ADDRESS."

GC-26 GUARANTEES AND WARRANTIES

All Deliverables shall be covered warranties and guarantees stated in the Exhibits to this Contract.

To the extent Contractor provides Deliverables manufactured by another entity, Contractor shall transfer original product warranty and any rights to manufacturer's related services to the County and shall submit all appropriate documentation of said transfer to the Director of the Using Department prior to or at the time the Contractor tenders the Deliverables.

GC-27 STANDARD OF DELIVERABLES

Except as may be expressly stated in the Special Conditions or Specifications of this Contract, only new, originally manufactured Deliverables will be accepted by the County. The County will not accept any Deliverables that have been refurbished, rebuilt, restored or renovated in any manner. In addition, experimental materials will not be acceptable. Deliverables not produced by regular production methods and/or which have not been offered for sale to the public through accepted industry trade channels for a reasonable period of time prior to the commencement of the Contract will be considered experimental.

GC-28 DELIVERY

All Contract Goods shipped to the County shall be shipped F.O.B., DESTINATION, FREIGHT PREPAID. Arrangements shall be made in advance by the Contractor in order that the County may arrange for receipt of the materials.

Truck deliveries will be accepted before 3:00 P.M. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or County Holidays. The County is not responsible for delivery delays due to waiting times for loading and unloading at dock locations.

The quantity of Contract Goods delivered by truck will be ascertained from a weight certificate issued by a duly licensed Public Weight-Master. In the case of delivery by rail, weight will be ascertained from bill of lading from originating line, but the County reserves the right to re-weigh at the nearest available railroad scale.

The County reserves the right to add new delivery locations or delete previously listed delivery locations as required during the Contract period. The only restriction regarding the County's right to add new delivery locations shall be that any new or additional location shall be within the geographical boundaries of the County of Cook.

GC-29 QUANTITIES

[Intentionally Omitted]

GC-30 CONTRACT INTERPRETATION

Whenever the singular is used herein, the masculine, feminine and neuter gender shall be deemed to include the others. The headings of articles, paragraphs and sections in this Contract are included for convenience only and shall not be considered by either party in construing the meaning of this Contract. If any provision or clause of this Contract shall be held to be invalid, such provision or clause shall be deleted from the Contract and the Contract shall be construed to give effect to the remaining portions thereof.

This Contract shall be interpreted and construed based upon the following order of precedence of component parts. Such order of precedence shall govern to resolve all cases of conflict, ambiguity or inconsistency:

1. Part I of this Contract
2. Part II – General Conditions
3. Economic Disclosure Forms and Execution
4. Exhibits to this Contract

GC-31 CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS

The confidentiality provisions of this Contract shall be as set forth in Exhibit C,

GC-32 GOVERNING LAW

This Contract shall be governed by and construed under the laws of the State of Illinois. The Contractor irrevocably agrees that, subject to the County's sole and absolute election to the contrary, any action or proceeding in any way, manner or respect arising out of the Contract, or arising from any dispute or controversy arising in connection with or related to the Contract, shall be litigated only in courts within the Federal District Court for the Northern District of Illinois in Chicago, and the Contractor consents and submits to the jurisdiction thereof. In accordance with these provisions, Contractor waives any right it may have to transfer or change the venue of any litigation brought against it by the County pursuant to this Contract.

GC-33 AUDIT; EXAMINATION OF RECORDS

Upon receipt of a reasonable written request from the County, the Contractor agrees that the Cook County Auditor or any of its duly authorized representatives shall, until three (3) years after the final payment under the Contract, have access and the right to examine any non-confidential documents, papers, invoices and records directly related to: (i) charges paid by the County; or (ii) Contractor's compliance with any term, condition or provision hereof. Such access and right shall be: (i) at the County's sole expense; (ii) conducted during Contractor's normal business hours; and (iii) subject to Contractor's security procedures. The Contractor further agrees that it shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Cook County Auditor or any of its duly authorized representatives shall, until expiration of three (3) years after final payment under the subcontract, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices and records of such subcontractor involving transactions relating to the subcontract, or to such subcontractor's compliance with any term, condition or provision thereunder or under the Contract.

In the event the Contractor receives payment under the Contract, reimbursement for which is later disallowed by the County, the Contractor shall promptly refund the disallowed amount to the County on request, or at the County's option, the County may credit the amount disallowed from the next payment due or to become due to the Contractor under any contract with the County.

To the extent this Contract pertains to Deliverables which may be reimbursable under the Medicaid or Medicare Programs, Contractor shall retain and make available upon request, for a period of four (4) years after furnishing services pursuant to this Agreement, the contract, books, documents and records which are necessary to certify the nature and extent of the costs of such services if requested by the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives. If Contractor carries out any of its duties under the Agreement through a subcontract with a related organization involving a value of cost of \$10,000.00 or more over a 12 month period, Contractor will cause such subcontract to contain a clause to the effect that, until the expiration of four years after the furnishing of any service pursuant to said subcontract, the related organization will make available upon request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of said subcontract and any books, documents, records and other data of said related organization that are necessary to certify the nature and extent of such costs. This paragraph relating to the retention and production of documents is included because of possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement; if this Section should be found to be inapplicable, then this paragraph shall be deemed inoperative and without force and effect.

GC-34 WAIVER

No term or provision of this Contract shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall be strictly limited to the identified provision.

GC-35 ENTIRE CONTRACT

It is expressly agreed that the provisions set forth in this Contract including all incorporated Exhibits constitute all the understandings and agreements between the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.

GC-36 FORCE MAJEURE OR UNAVOIDABLE DELAYS

Neither Contractor nor County shall be liable for failing to fulfill any obligation under this Contract if such failure is caused by an event beyond such party's reasonable control which is not caused by such party's fault or negligence. Such events shall include acts of God, acts of war, fires, lightning, floods, epidemics, or riots.

GC-37 INDEPENDENT CONTRACTOR STATUS; NO THIRD PARTY BENEFICIARIES

The Contractor and its employees, agents and subcontractors are, for all purposes arising out of the Contract, independent contractors and not employees of the County. It is expressly understood and agreed that neither the Contractor nor Contractor's employees, agents or subcontractors shall be entitled to any benefit to which County employees may be entitled including, but not limited to, overtime or unemployment compensation, insurance or retirement benefits, workers' compensation or occupational disease benefits or other compensation or leave arrangements.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venturer or any relationship between the parties hereto other than that of independent contractors. Nothing herein shall be construed to confer upon any third parties the status of third party beneficiary.

GC-38 GOVERNMENTAL JOINT PURCHASING AGREEMENT

Pursuant to Section 4 of the Illinois Governmental Joint Purchasing Act (30 ILCS 525) and the Joint Purchase Agreement approved by the Cook County Board of Commissioners (April 9, 1965), other units of government may purchase goods or services under this contract.

GC-39 COOPERATIVE PURCHASING

As permitted by the County of Cook, other government entities may wish to also participate under the same terms and conditions contained in this contract (piggyback). Each entity wishing to piggyback must have prior authorization from the County of Cook and vendor. If such participation is authorized, all purchase orders will be issued directly from and shipped directly to the entity requiring supplies/services. The County shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this contract.

GC-40 COOPERATION WITH INSPECTOR GENERAL

Persons or businesses seeking County contracts are required to abide by all of the applicable provisions of the Office of the Independent Inspector General Ordinance (Section 2-281 et. seq. of the Cook County Code of Ordinances). Failure to cooperate as required may result in monetary and/or other penalties.

Contractors, subcontractors, licensees, grantees or persons or businesses who have a County contract, grant, license, or certification of eligibility for County contracts shall abide by all of the applicable provisions of the Office of the Independent Inspector General Ordinance. Failure to cooperate as required may result in monetary and/or other penalties.

GC-41 FEDERAL CLAUSES

[Intentionally Omitted]

END OF SECTION

CONTRACT NO. 13-90-12420

EXHIBIT "A"
CONTRACTOR QUOTE

International Business Machines Corporation

International Business Machines Corporation, PO Box 643600, Pittsburgh, PA 15264-3600



IBM Software Quotation

22-Jul-2013

Attn: Richard Jackson
IL-Cook County Clerk of the Circuit
69 W Washington
Suite 2500
CHICAGO IL 60602
UNITED STATES

Passport Advantage Agreement Number: 27444
IBM Customer Number: 2167293
Relationship SVP Level: GV

Passport Advantage Site Number: 7538845
Anniversary: 01-Jan
Quotation SVP Level: GV

Dear Customer:

Thank you for your inquiry regarding IBM Software.

Any and all prices herein are suggested prices only and are subject to change at IBM's sole discretion. Products listed herein are subject to withdrawal or modification by IBM at any time at IBM's sole discretion. Final coverage dates for new license, Software Subscription and Support reinstatement, and Software Subscription and Support renewal part numbers will be based upon IBM's acceptance of the order, and as specified in the applicable agreements, irrespective of the dates which may appear in this quote.

This quotation is valid from 22-Jul-2013 and will expire on 26-Jul-2013.

Your order will be governed by and is subject to the terms of your Passport Advantage Agreement or the Passport Advantage Express Agreement, as applicable, against which this transaction will be placed.

To place your order, please go to the Passport Advantage Online Web site

<https://www-112.ibm.com/software/howtobuy/passportadvantage/paocustomer/order/Quote?P0=Q2"e=0016199096>. A username and passcode are required to access this secure Web site. If you do not have this information, contact eCustomer Care. The eCustomer Care contact information for your location can be found at

http://www.ibm.com/software/howtobuy/passportadvantage/paocustomer/docs/en_US/ecare.html.

If you need assistance with placing your order or wish to discuss your quotation, please contact the IBM Representative noted below.

Yours sincerely,

Cathleen M. Lothrop
Phone Number: 1-770-863-1571
Fax Number: 1-845-491-3453
E-mail Address: harec@us.ibm.com

International Business Machines Corporation

International Business Machines Corporation, PO Box 643600, Pittsburgh, PA 15264-3600



Quotation Number: 16199096
 IBM Contact: Cathleen M. Lothrop
 Phone Number: 1-770-863-1571

Quote Effective Date: 22-Jul-2013
 Quote Expiration Date: 26-Jul-2013

Passport Advantage Agreement Number: 27444
 IBM Customer Number: 2167293
 Relationship SVP Level: GV

Passport Advantage Site Number: 7538845
 Anniversary: 01-Jan
 Quotation SVP Level: GV

Customer:
 Attn: Richard Jackson
 IL-Cook County Clerk of the Circuit
 69 W Washington
 Suite 2500
 CHICAGO IL 60602
 UNITED STATES

| Item | Part Number | Quantity | Points | Unit SVP Price | Discounted Price | Extended Amount |
|--|-------------|----------|--------|----------------|------------------|------------------|
| IBM Integration Bus Processor Value Unit (PVU) SW Subscription & Support Reinstatement 12 Months 001 D56P4LL 200 566.00 525.30 335.00 67,000.00 22-Jul-2013 - 31-Jul-2014 | | | | | | |
| Applicable tax will be recalculated at the time of order processing. | | | | | | |
| Total Points: 566.00 | | | | | | 67,000.00 |
| Subtotal in USD: | | | | | | 67,000.00 |
| Total in USD: | | | | | | 67,000.00 |
| Your order is governed by and subject to the terms of your Passport Advantage Agreement or the Passport Advantage Express Agreement, as applicable, against which this transaction will be placed. | | | | | | |

Useful/Important Web resources:

Passport Advantage information, customer secure site access, training, etc.: ibm.com/software/passportadvantage
 IBM's International Program License Agreement and product License Information documents: ibm.com/software/sla
 IBM Software Support Web site: ibm.com/software/support

IBM Customer Number: 2167293

CONTRACT NO. 13-90-12420

EXHIBIT "B"

IBM PASSPORT ADVANTAGE AGREEMENT (AMENDED BY THE PARTIES)



International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents attached to County Contract 13-90-12420 is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

Required Consents

Despite any language to the contrary contained in herein, the parties' agreement regarding Required Consents shall be as follows: The County shall be obligated to obtain and provide to IBM all Required Consents necessary for us to provide the Services described in this Contract. A Required Consent means any consents or approvals required to give Contractor or its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products not provided by Contractor under this Contract, to enable Contractor and its subcontractors to perform the Services set forth hereunder in Exhibit A without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. Contractor will make the County aware of the need for any Required Consents of which Contractor is aware.

1. General

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 - General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, RSVP Level, Changes to Agreement Terms, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 - Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 - Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 - Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 - IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 - Country-unique Terms.

1.2 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

Additional Site - any Site that subsequently enrolls under this Agreement.

Anniversary - the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance - an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a "Virtual Appliance") or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports - a set of reports available in the IBM License Metric Tool ("ILMT"), or by another method acceptable to IBM as specified at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit ("PVU") license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User - an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content - information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer - the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company - the legal entity within Customer's Enterprise of which the entity that identifies itself as the "Originating Site" on an "IBM International Passport Advantage Enrollment Form" is a part.

Customer-set-up Machine Component - an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation -

- a. for a Customer-set-up Machine Component, the date on Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer's IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date - the date IBM accepts Customer's initial order for Eligible Products, either directly from Customer or from Customer's reseller.

Eligible Operating System Technology - an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Processor Technology - a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Products - commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer's use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product - a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Eligible Virtualization Environment - a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology - a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change - an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise - any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

Fixed Term - a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity - The total number of physical processor cores activated and available for use on a server.

IBM - the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner - an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component - a Machine Component bearing an IBM logo.

IBM Originating Company - the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders.

IBM Program - a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") - offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User - one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support - software subscription and support provided for IBM Programs licensed under the IPLA. See 3.5.1 **IBM Software Subscription and Support** for further description.

IPLA - IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at <http://www.ibm.com/software/sla> and from IBM and its resellers.

License Information ("LI") - a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component - microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component - a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program - a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Company - the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site - Originating Company Site.

Personal Data - any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip - Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core - A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket - Electronic circuitry that accepts a Processor Chip.

Processor Value Unit ("PVU") - A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at

http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program - the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

Program Component - an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") - the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP - Relationship Suggested Volume Price.

Selected Program - a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support - Support for specified Selected Programs.

Service Provider - an entity that provides information technology services for end user customers, either directly or through a reseller.

Site - any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications - information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing - Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period - the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP - Suggested Volume Price.

Term - the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") - additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Third Party Software Subscription and Support - software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade - a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity - the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Acceptance of Terms

The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This

Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **Section 1.15 Agreement Termination**.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher "SVP Level." In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

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

1.9 Changes to Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of its Product and Service offerings by giving the Chief Information Officer of the Cook County Clerk of the Circuit Court three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, renewals, and on-going transactions that do not expire. For on-going transactions with a defined renewable contract period, the County may request that IBM defer the change effective date until the end of the current contract period if 1) the change affects your current contract period or 2) the County considers the change unfavorable. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change. Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer and IBM are void. Notwithstanding the forgoing, changes to charges/pricing for Products and Services or changes that extend the term of the Contract or any of its exhibits are invalid unless the Parties execute a written amendment in compliance with Part II, General Conditions, GC-16 Modifications and Amendments.

1.10 Eligible Products

Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer's RSVP or a transaction's SVP, as applicable. See Section 1.8 **RSVP Level** above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.11 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 Intellectual Property Protection

For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.12.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.12.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is IBM SaaS or subject to Fixed Term charges, up to twelve months' charges).

1.12.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.13 Limitation of Liability

The limitations and exclusions in this **Section 1.13 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.13.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. LOSS OF, OR DAMAGE TO, DATA;
- b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

1.14 General Principles of Our Relationship

1.14.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.14.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.14.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.14.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as permitted in Section 1.13 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.15 Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice to the Chief Information Officer of the Cook County Clerk of the Circuit Court. If Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

1.16 Compliance Verification

For purposes of this **Section 1.16 (Compliance Verification)**, "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.16** remain in effect during the period the Eligible Product is the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

1.17.2 Governing Law

Governing law is as provided in Part II, General Conditions, GC-32. Nothing in this Agreement affects any 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.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

2.1 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3. Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, Customer must have already acquired the Program code.

3.1 IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA. **3.1.1 Versions and Platforms:**

Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Customer is authorized to use the Program(s) that Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Customer acquired it.

3.1.2 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.1.4 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 Conflict between the Terms of this Agreement and those of the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment 3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.
- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

- a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:
 - (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
 - (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
 - (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
 - (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization

Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

3.3.1 Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this stated in Part I of County Contract 13-90-12420.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Customer chooses to resume use of the Program, Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at <http://www.ibm.com/software/passportadvantage>. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

Customer will notify IBM in writing prior to Customer's next Anniversary in the event Customer's total number of CEO Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of Customer's Sites. A reduction in the number of CEO Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of CEO Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of CEO Users applicable to that CEO Category, Customer may not renew IBM Software Subscription and Support on a CEO Product Category basis.

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

- a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").
- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/support/lifecycle/>.
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support>.
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified

operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at <http://www.ibm.com/lotus/PASelectedsupportprograms>.

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.
- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

IBM does not provide licenses under this Agreement for Selected Programs.

~~3.5.3 Customer Data and Databases~~

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4 Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms stated in Part I of County Contract 13-90-12420.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4. Appliances

4.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
 - (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
 - (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.
- b. Upgrades and Engineering Changes
- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.
 - (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

5.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

5.2 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not
 - (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;
 - (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
 - (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
 - (4) rent, sublicense, or lease the IBM SaaS offering;
 - (5) create Internet "links" to or from the IBM SaaS offering; or
 - (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6. Country-unique Terms

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Parts 1 through 5. All terms in Parts 1 through 5 that are not changed by these amendments remain unchanged and in effect. This part 6 is organized as follows:

- Section 6.1 contains multiple country amendments to section 1.17 (Geographic Scope and Governing Law);
- Section 6.2 contains the Americas country amendments to other Agreement terms;
- Section 6.3 contains the Asia Pacific country amendments to other Agreement terms; and
- Section 6.4 contains the Europe, Middle East, and Africa country amendments to other Agreement terms.

6.1 Multiple country amendments to section 1.17 (Geographic Scope and Governing Law)

6.1.1 Geographic Scope EUROPE, MIDDLE EAST, AND AFRICA

In South Africa, Namibia, Lesotho, and Swaziland, the following paragraph pertains to geographic scope and replaces the first paragraph in section 1.17.2 Governing Law:

The rights, duties, and obligations of each party are valid only in South Africa, Namibia, Lesotho, and Swaziland, unless otherwise stated in a Transaction Document, except that all licenses are valid as specifically granted.

6.1.2 Governing Law

In the second paragraph of section 1.17.2 **Governing Law**, the phrase, "the laws of the country in which the transaction is performed" is replaced with the following:

AMERICAS

- a. in **Canada**: the laws in the Province of Ontario;
- b. in **Mexico**: the federal laws of the Republic of Mexico;
- c. in **the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines**: the laws of the State of New York, United States;
- d. in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- a. in **Cambodia and Laos**: the laws of the State of New York, United States;
- b. in **Australia**: the laws of the State or Territory in which the transaction is performed;
- c. in **Hong Kong SAR and Macau SAR**: the laws of Hong Kong Special Administrative Region ("SAR");
- d. in **Taiwan**: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

- a. In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of **Austria**
- b. in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of **France**;
- c. in **Estonia, Latvia, and Lithuania**: the laws of **Finland**;
- d. in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of **England**; and
- e. in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the **Republic of South Africa**.

6.1.3 Jurisdiction

The following paragraph pertains to jurisdiction and is added to section 1.17 as it applies for the countries identified in bold print below:

All rights, duties, and obligations under this Agreement are subject to the courts of the country in which the transaction is performed except that in the countries identified below, all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

AMERICAS

- a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,
- b. in **Brazil**: the court of Rio de Janeiro, RJ;
- c. in **Chile**: the Civil Courts of Justice of Santiago;
- d. in **Colombia**: the judges and courts of general jurisdiction of Bogota, Colombia;
- e. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- f. in **Mexico**: the courts located in Mexico City, Federal District;
- g. in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- h. in **Uruguay**: the courts of the city of Montevideo;
- i. in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- j. in **Austria**: the court of law in Vienna, Austria (Inner-City);

- k. **In Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the Commercial Court of Paris;**
- l. **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the English courts;**
- m. **in South Africa, Namibia, Lesotho and Swaziland: the High Court in Johannesburg;**
- n. **in Greece: the competent court of Athens;**
- o. **in Israel: the courts of Tel Aviv-Jaffa;**
- p. **in Italy: the courts of Milan;**
- q. **in Portugal: the courts of Lisbon;**
- r. **in Spain: the courts of Madrid; and**
- s. **in Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.**

6.1.4 Arbitration

The following terms pertain to arbitration and are added to section 1.17 as they apply for the countries identified in bold print below. The provisions of these paragraphs apply to the extent permitted by applicable governing law and rules of procedure:

ASIA PACIFIC

- a. **in Cambodia, India, Laos, Philippines, and Vietnam:** Disputes arising out of or in connection with this Agreement will be finally settled by arbitration, which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.
- b. **in the People's Republic of China:** In the event of a dispute, in case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this Agreement will continue to be performed except for the part that the parties are disputing and which is undergoing arbitration.
- c. **in Indonesia:** Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

EUROPE, MIDDLE EAST, AND AFRICA

- d. in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation; and
- e. in Estonia, Latvia, and Lithuania: All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

6.2 AMERICAS COUNTRY AMENDMENTS

BELIZE, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, AND PANAMA

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE":

IBM will renew, for an additional payment, expiring software subscription and support for all of Customer's Program licenses and Selected Support for all of Customer's Selected Program licenses to the next Anniversary if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the software subscription and support or Selected Support, as applicable, invoice for the next term.

3.3.1 Automatic Renewal of Fixed Term Licenses

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE":

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of Customer's Program licenses for the same duration as the expiring term if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the Fixed Term License invoice for the next term.

ALL AMERICAS (EXCEPT BRAZIL, CANADA, MEXICO, AND THE UNITED STATES)

The following terms apply to all Americas countries (except Brazil, Canada and the United States), unless a specific country term states otherwise.

1.6 Payment

The following replaces 1.6b:

Amounts are due upon receipt of invoice and payable as IBM specifies in a Transaction Document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

1. As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official

exchange rate published by the bank specified in a Transaction Document on the date payment is made.

2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Transaction Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the Transaction Document in country national currency, calculated at the official exchange rate that is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

LATIN AMERICA

The following term applies to all countries in Latin America, except for Argentina and Brazil.

1.4 Acceptance of Terms

The following replaces the first sentence:

Customer accepts the terms in Attachments and Transaction Documents by signing them. **ARGENTINA, BRAZIL, CHILE, COLOMBIA, ECUADOR, MEXICO, PERU, URUGUAY, VENEZUELA**

1.8 RSVP Level

For Public Bodies who are subject to the applicable Public Sector Procurement Legislation specific RSVP indicators apply.

3.3.1 Automatic Renewal of Fixed Term Licenses and 3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

Does not apply for Public Bodies who are subject to the applicable Public Sector Procurement Legislation.

BRAZIL AND COLOMBIA

1.9 Changes to Agreement Terms

The following is added to this section:

If Customer disagrees with the change, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to Customer of the change.

All notices will be sent to the other party by registered letter.

1.15 Agreement Termination

The following is added after the fourth paragraph:

All notices will be sent to the other party by registered letter.

ARGENTINA

1.4 Acceptance of Terms

The following replaces the second sentence:

~~A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by signing a Transaction Document.~~

1.7 Taxes

Both IBM and the Customer will pay the stamp tax in equal amounts and when applicable Impuesto de Sellos).

BRAZIL

1.4. Acceptance of Terms

The following replaces the second paragraph in this section:

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by signing a Transaction Document.

1.6 Payment

The following replaces 1.6b:

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

1.14.1 Notices and Communications

The following replaces 1.14.1:

Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

1.10 Eligible Products

The following replaces the first sentence in the second paragraph in this section:

IBM may add or withdraw Eligible Products at any time. IBM may increase SVP with notice. IBM's ability to increase such charges, rates, and minimums will be subject to the requirements of Brazilian law.

3.3.1 Automatic Renewal of Fixed Term Licenses and 3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

The following is added after the second paragraphs of both sections:

The transaction document will describe the process of the written communication to Customer containing the applicable price and other information for the renewal period.

3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

The following is added to this section

Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support: Portuguese version of the Support Handbook will be provided upon written request.

COLOMBIA

1.7 Taxes

Customer and IBM accepts to pay, each one, fifty percent (50%) of legalization costs of the Proposal.

MEXICO

1.6 Payment

The following replaces 1.6b:

Amounts are due upon receipt of invoice and payable as IBM specifies in a Transaction Document.

The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

The payment must be made in United States Dollars or the equivalent in local currency at the exchange rate published by the "Banco de Mexico" in the Diario Oficial de la Federacion correspondent to the payment date of the invoice.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

1.9 Changes to Agreement Terms

The following is added after the third sentence in the first paragraph:

For those Eligible Products priced in Mexican currency, IBM may increase SVP by giving Customer fifteen days' written notice.

PERU

1.13 Limitation of Liability

The following is added to the end of this section:

Except as expressly required by law without the possibility of contractual waiver, Customer and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is

held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action. In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

NORTH AMERICA

CANADA

1.13 Limitation of Liability

1.13.1 Items for which IBM May be Liable

The following replaces the last sentence in this section 1.13.1:

Damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence for which IBM is legally liable are not subject to a cap on the amount of damages.

1.4 General Principles of Our Relationship

1.14.3 Compliance with Laws

The following replaces the one-sentence paragraph at the end of this section:

Each party will comply with applicable export and import laws and regulations, including those that apply to goods of US origin and those that restrict or prohibit or limit export for certain uses or to certain users.

1.14.5 Other Principles of Our Relationship

The following replaces item 1.14.5f:

No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except or as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following subsection is added:

1.14.6 Data Privacy

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel, or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

a. General

- (1) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
- (2) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

b. Security Safeguards

- (1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical, and organizational security measures required to protect Personal Data.
- (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties, or otherwise processed to fulfill the purpose(s) for which it was made available.

d. Access Requests

- (1) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
- (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

(3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

f. Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Customers who are public bodies subject to public sector privacy legislation, this section 1.14.6 applies only to Personal Data made available to Customer in connection with this Agreement, and the obligations in this section apply only to Customer, except that: 1) section b(1) applies only to IBM; 2) sections a(1) and d(1) apply to both parties; and 3) section d(2) and the last sentence in a(2) do not apply.

UNITED STATES OF AMERICA 1.7

Taxes

The following is added at the end of this section

For Programs delivered electronically in the United States for which Customer claims a state sales and use tax exemption, Customer agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

1.14 General Principles of Our Relationship

1.14.4 Dispute Resolution

The following is added to the end of this section:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

1.14.5 Other Principles of Our Relationship

The following is added as 1.14.5.m:

U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

3. Programs and Subscription and Support

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

CUSTOMER MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.3.1 Automatic Renewal of Fixed Term Licenses:

CUSTOMER MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

2.3 Extent of Warranty

The following is added as the first paragraph:

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

4.4 Machine Components

4.4.2 Title and Risk of Loss

The following replaces the first paragraph:

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine Component described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine Component is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine Component until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

6.3 ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data - any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy Act 1988 (Cth)."

1.6 Payment

The following paragraph is added after 1.6c as 1.6d:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

1.12 Intellectual Property Protection

1.12.3 Claims for which IBM is Not Responsible

The following replaces the second from last sentence:

Subject to any rights Customer may have under the Trade Practices Act 1974, this Intellectual Property Protection section states IBM's entire obligation to Customer and Customer's exclusive remedy regarding any third party intellectual property claims.

1.13 Limitation of Liability

The following paragraph is included at the end of 1.13.1:

Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to, at IBM's discretion:

(a) for services:

- (1) the supplying of the services again or
- (2) the payment of the cost of having the services supplied again; and

(b) for goods:

- (1) the repair or replacement of the goods or the supply of equivalent goods; or
- (2) the payment of the cost of replacing the goods or having the goods repaired

Where a guarantee relates to the right to sell, quiet possession or clear title of a good under schedule 2 of the Competition and Consumer Act, or the goods or services are of a kind ordinarily acquired for personal, domestic, or household use or consumption, then none of the limitations in this section apply.

2.5 Extent of Warranty

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation. The reference to warranties and conditions throughout this agreement includes a reference to guarantees for the purpose of the Competition and Consumer Act 2010.

The following paragraph replaces the paragraph that begins "Unless otherwise specified in an Attachment or Transaction Document.."

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions or guarantees of any kind. However, non-IBM manufacturers, developers, suppliers or publishers may provide their own warranties to Customer.

5.5 Content

The following paragraph is added after the paragraph that begins "IBM provides only storage and delivery services for Content.

To the extent IBM is collecting any Personal Data, Customer acknowledges that in disclosing the Personal Data to IBM, it has undertaken all steps necessary to comply with the disclosure and collection requirements of the National Privacy Principles contained in the Privacy Act 1988, Customer agrees and acknowledges that it has taken reasonable steps to disclose to the relevant individuals such information about IBM that is prescribed under National Privacy Principle 1.3 that Customer reasonably believes is necessary for Customer to comply with the National Privacy Principle.

NEW ZEALAND

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data - any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy and Personal Information Protection Act."

1.6 Payment

The following paragraph is added after 1.6c as 1.6d:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

2.5 Extent of Warranty

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified in this section are in addition to any rights Customer may have under the Consumer Guarantee Act 1993 or other legislation that cannot be excluded or limited by law.

The following paragraph replaces the paragraph that begins "Unless otherwise specified in an Attachment or Transaction Document.."

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions, or guarantees of any kind. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

BANGLADESH, BHUTAN, AND NEPAL

3.5 Programs and Subscription and Support

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of Customer's Program licenses or Selected Support for all of Customer's Selected Program licenses to the next Anniversary if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the software subscription and support or Selected Support, as applicable, invoice for the next term.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.3.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of Customer's Program licenses for the same duration as the expiring term if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the Fixed Term License invoice for the next term.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the Special Administration Regions "SARs" specified, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with the following:

- 1) In **Hong Kong SAR**: "Hong Kong SAR"
- 2) In **Macau SAR**: "Macau SAR," except under section 1.17.2 (Governing Law) above; and
- 3) In **Taiwan**: "Taiwan." **INDIA**

1.14.4 Dispute Resolution

The following replaces the final sentence in 1.14.4:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

INDONESIA

1.15 Agreement Termination

The following paragraph is added:

Both parties waive the provisions of article 1266 of the Indonesian Civil Code to the extent the article requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

1.6 Payment

Add the following sentence:

Customer agrees to pay within 30 days from our invoice date.

1.14.4 Dispute Resolution

The following is inserted at the end of 1.14.4:

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

1.15 Agreement Termination

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior written notice.

PEOPLE'S REPUBLIC OF CHINA

1.3 Definitions - Definition of "Date of Installation"

The following replaces the definition of Date of Installation:

Date of Installation —

- a. for an IBM Machine Component IBM is responsible for installing, the business day after the day IBM installs it.
- b. for a Customer-set-up (CSU) Machine Component, the earlier of i) the second business day after arrival at Customer's installation location or ii) two months after the date of delivery. When a CSU Machine Component is delivered for connection to a non-CSU Machine or Machine Component delivered by IBM, the Date of Installation of the CSU Machine Component will be the later of these two installation dates.

SINGAPORE

1.14.5 Other Principles of Our Relationship

The following replaces the terms of 1.14.5e:

Subject to the rights provided to IBM's Eligible Product developers and suppliers as provided in 1.13 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

6.4 EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

EUROPE, MIDDLE EAST, AND AFRICA

The following term applies to all countries in Europe, the Middle East, and Africa, unless a specific country term states otherwise.

1.13.1 Items for which IBM May be Liable

In the first paragraph, the following replaces "U.S. \$100,000": *EUR 500,000 (five hundred thousand euro)*
EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED

The following term applies to all EU Member States, Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

1.14.5 Other Principles of Our Relationship

The following replaces 1.14.5d:

- a. Definitions - For the purposes of 1.14.5d, the following additional definitions shall apply:
- (1) Business Contact Information - business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.
 - (2) Business Contact Personnel - Customer employees and contractors to whom the Business Contact Information relates. For Austria, Italy, and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information).
 - (3) Data Protection Authority - the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
 - (4) Data Protection & Electronic Communications Legislation - i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
 - (5) IBM Group - International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- b. Customer authorizes IBM:
- (1) to process and use Business Contact Information within IBM Group in support of Customer, including the provision of support services, and for the purpose of furthering the business relationship between Customer and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and
 - (2) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- c. IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- d. To the extent required by the Data Protection & Electronic Communications Legislation, Customer represents that it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- e. Customer authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

The following terms are added as a new section 4.4.6 for Iceland, Norway, and all Member States of the European Union ("EU"), except Germany:

4.4.6 Disposal of Machines

As from the effective date in Customer's country of local laws and regulations implementing Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), the following applies:

4.4.6.1 When any Machine supplied under this Agreement replaces a machine put on the market before August 13, 2005, then IBM will collect and dispose of such replaced machine, provided that IBM is required to do so by applicable law. IBM may charge for such collection and disposal, to the extent permitted by applicable law.

4.4.6.2 For all WEEE, Customer is responsible for making the WEEE available for collection from Customer's premises within 30 days after supply of the replacement Machine. Whenever IBM collects and disposes of Customer WEEE, based on a legal or contractual obligation, Customer agrees:

- a. to securely erase from any WEEE all programs not provided by IBM with the original equipment and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data"); and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
- b. to remove all funds, if any, from WEEE, returned to IBM;
- c. that IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
- d. that IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

WESTERN EUROPEAN COUNTRIES

2.3 Warranty for IBM Machine Components of IBM Appliances

The following paragraph is added after the second paragraph for all countries listed in the definition of Western Europe below:

The warranty for IBM Machines acquired in Western Europe will be valid and applicable in all Western European countries provided the Machines have been announced and made available in such countries. For purposes of this paragraph, "Western Europe" means Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently that subsequently joins the European Union, as from the date of accession.

EMEA-WIDE

1.6 Payment

The following replaces 1.6b for the following countries except as noted:

Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), Customer may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay. **Estonia,**

Latvia, and Lithuania:

~~2% per month apportioned to the number of days of delay. **Finland:**~~

Interest according to the Act on interest rate apportioned to the number of days of delay. **France:** In compliance with article 441-6 of the Code of Commerce, a late payment fee is payable, without any need for IBM to issue a reminder, in respect of the period commencing on the day following the payment due date specified on IBM's invoice, and ending on the date when full payment of the invoiced amount is made; such late payment fee shall be calculated on the basis of a rate equal to the European Central Bank's rate for its most recent refinancing operation, plus 10 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if IBM does so, it will advise Customer in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, Customer will be in default without the necessity of a default notice. In such case Customer will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay. **UK and**

Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that Customer fails to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, AND UNITED ARAB EMIRATES

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and

Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of Customer's Program licenses or Selected Support for all of Customer's Selected Program licenses to the next Anniversary if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the software subscription and support or Selected Support, as applicable, invoice for the next term.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.3.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of Customer's Program licenses for the same duration as the expiring term if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the Fixed Term License invoice for the next term.

AUSTRIA

1.6 Payment

Replace the above EMEA-wide text in 1.6b with the following:

Payment in full is due and payable without deduction upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Transaction Document.

1.13 Limitation of Liability

The following sentence is added:

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

1.13.1 Items for which IBM May Be Liable

The following replaces the first sentence:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Customer is entitled to recover damages from IBM.

In the second sentence of the first paragraph, delete entirely the parenthetical phrase "(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)."

1.13.2 Items for which IBM Is Not Liable

The following replaces 1.13.2b:

indirect damages or consequential damages; or

2.5 Extent of Warranty

The following replaces the last paragraph

Warranty for non-IBM Eligible Products:

- (a) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (b) IBM warrants that each non-IBM Eligible Product, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Eligible Product is delivered without specifications, IBM only warrants that the non-IBM Eligible Product information correctly describes the non-IBM Eligible Product, and that the non-IBM Eligible Product can be used according to the non-IBM Eligible Product information.
- (c) IBM does not warrant uninterrupted or error-free operation of a non-IBM Eligible Product or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Eligible Product. IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.
- (d) At IBM's discretion, warranty may also be provided by the third party provider himself.
- (e) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (f) In addition, the limitation of liability provision will apply.
- (g) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to Customer.

AUSTRIA, DENMARK, ESTONIA, FINLAND, LATVIA, LITHUANIA, NORWAY, SWEDEN:

1.7 Taxes

Delete the last sentence:

This excludes those taxes based on IBM's net income.

BELGIUM, FRANCE, UK, IRELAND, SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND:

1.7 Taxes

Delete 1.7.

EGYPT

1.14. General Principles of Our Relationship

Delete 1.14.1.

FRANCE

1.9. Changes to the Agreement Terms

The following is added to this section:

If Customer disagrees with the change, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to Customer of the change.

All notices will be sent to the other party by registered letter.

1.15. Agreement Termination

The following is added after the fourth paragraph:

All notices will be sent to the other party by registered letter.

GERMANY

1.13. Limitation of Liability

The following replaces the Limitation of Liability section in its entirety:

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Eligible Product is IBM SaaS or subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Customer an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Customer suffers, subject to the provisions of Items a and b above.

1.14.4. Dispute Resolution

The following replaces the third sentence of 1.14.4:

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 2 (Warranties) of this Agreement.

1.14.5 Other Principles of Relationship

The following replaces 1.14.5e:

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Customer, except (to the extent permitted in Section 1.13 (Limitation of Liability) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

The following replaces 2.2

IBM warrants that Software Maintenance will be provided using reasonable care and skill, and according to its current description and the provisions of this Agreement.

The Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, the Customer may in respect to such defect, provided that the value of the serviceability of the work is impaired, either request a reduction of price, or, rescind this Agreement. In case of minor defects or deviations, the Customer shall not be entitled to rescind this Agreement. In case the Customer should be entitled to liability claims because of a warranty defect, the Limitation of Liability section shall apply. However the Customer shall not be entitled to liability claims resulting from minor warranty defects.

2.3 Warranty for IBM Machine Components of IBM Appliances

The following replaces 2.3:

IBM warrants that each IBM Machine Component is free from defects at the time of delivery and conforms to its Specifications. The warranty period for a Machine Component commences on the Date of Installation, however at the earliest upon delivery. During the warranty period, IBM will remedy any warranty defects, through repair or exchange.

In the event that IBM is unable to remedy a warranty defect or defect correction fails within a reasonable period of time, the Customer may in respect of such defect, provided the value or the serviceability of the Machine Component is impaired, either request a reduction of price, or rescind this Agreement. In case of minor warranty defects, the Customer shall not be entitled to rescind this Agreement.

In case the Customer should be entitled to liability claims because of a warranty defect, the Limitation of Liability section shall apply. However the Customer shall not be entitled to liability claims resulting from minor warranty defects.

2.5 Extent of Warranty

The second paragraph is deleted.

The following replaces the last paragraph:

Warranty for Non-IBM Eligible Products may, at IBM's discretion, also be provided by non-IBM manufacturers, developers, suppliers, or publishers themselves.

4.4.6 Disposal of Machines

The following terms are added as a new section 4.4.6:

In accordance with the law for the placing on the market, the return, and the environmentally compatible disposal of Electrical and Electronic Equipment (Electrical and Electronic Equipment Law - ElektroG), for machines the following will apply:

4.4.6.1 IBM is prepared to take back IBM waste electrical and electronic equipment (WEEE) that were put on the market as new machines after August 13, 2005, and IBM will be responsible for the disposal of such machines.

4.4.6.2 According to German law, Customer is responsible to dispose of WEEE, which is not covered by the preceding sentence. In such case, IBM is prepared to take back and dispose of, in compliance with applicable law, such WEEE by charging the applicable disposal fee to the Customer, based on a separate agreement.

Customer is responsible for making the WEEE available for collection from Customer's premises within 30 days after supply of the replacement Machine.

4.4.6.3 Whenever IBM collects and disposes of Customer WEEE, based on a legal or contractual obligation, Customer agrees:

- a. Customer is responsible to remove all funds, if any, from WEEE returned to IBM, and to securely erase any data that Customer considers sensitive (including personal data), existing in/on waste machines (e.g. hard disk, storage devices, memory chips, etc.), before making them available for collection by IBM or its designated assignee. In the event that Customer is unable to comply with this obligation due to technical reasons, Customer will inform IBM thereof in writing. In this case, IBM shall be entitled to delete all data stored in/on the waste machines, as instructed and requested by Customer and according to the "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG";
- b. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
- c. IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

NETHERLANDS

1.6. Payment

Add the following paragraphs to 1.6b:

We may apply Customer's payment to Customer's other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that Customer fails to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with Customer on Customer's solvency and to require payment in advance of delivery or other security for payment.

Customer's obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment, or recoupment.

Replace 1.7 with the following:

Customer agrees to pay all taxes and duties, regardless of their qualification, unless specified otherwise on the invoice.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

1.6 Payment

Add the following additional sentence:

When Customer makes payment by cheque, payment is deemed to have been made only when Customer's cheque has been received by IBM and its relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1.3 Definitions - Definition of "Non-IBM Program"

The following is added to definition of. Non-IBM Programs:

No liability of whatever sort is accepted or warranty granted by IBM.

1.14. General Principles of Our Relationship

Delete 1.14.1.

TURKEY

1.6 Payment

The following replaces 1.6b

Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment charges.

Add the following to the end of this section:

Customer is responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.

IRELAND AND UNITED KINGDOM

The following sentence is added to the second paragraph of the preamble:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud. **1.13 Limitation of**

Liability

1.13.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or relating to, any Program license granted, any goods sold or services rendered by IBM under this Agreement in respect of which IBM is legally liable to Customer, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Customer as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Eligible Product is subject to fixed term charges, up to 12 months' charges) for the Eligible Product that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation. In addition, the amount (if any) payable by IBM under the provisions of section 1.12.1 shall not be subject to any limitation or exclusion set forth in this section 1.13.

1.13.2 Items for Which IBM is Not Liable

The following replaces Items 1.13.2b and 1.13.2c:

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

CONTRACT NO. 13-90-12420

EXHIBIT "C"

IBM CONFIDENTIALITY TERMS

Agreement for Exchange of Confidential Information

The parties' mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining each party's ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:

- a. in writing;
- b. by delivery of items;
- c. by initiation of access to Information, such as may be in a data base; or
- d. by oral or visual presentation.

Information should be marked with a restrictive legend of the Discloser. If information is not marked with such legend or is disclosed orally, the information will be identified as confidential at the time of disclosure.

2. Obligations

The Recipient agrees to:

- a. use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- b. use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- c. another party with the Discloser's prior written consent.

Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

- a. already in its possession without obligation of confidentiality;
- b. developed independently;
- c. obtained from a source other than the Discloser without obligation of confidentiality;
- d. publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- e. disclosed by the Discloser to another without obligation of confidentiality.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

EXHIBIT C

Any Information regarding the Discloser's future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser's products and services remains at Discloser's sole discretion.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. Import/Export

The Recipient will:

- a. comply with applicable export and import laws and regulations including, without limitation, U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users, comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations, and
- b. unless authorized by applicable governmental license or regulation, not directly or indirectly export or re-export any technical information or software subject to this Agreement (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations.

This section will survive the termination or expiration of this Agreement and the confidentiality period above and will remain in effect until fulfilled.

7. Termination

[Intentionally Omitted].

8. General

- a. This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement.
- b. The exchange of Information under this Agreement does not create any joint relationship, or authorize either party to act or speak on behalf of the other.
- c. The receipt of Information under this Agreement will not in any way limit the Recipient from:
 - (1) developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of the Discloser;
 - (2) developing, manufacturing, marketing or providing products or services to others who compete with the Discloser;
 - (3) ~~assigning its employees in any way it may choose or~~
 - (4) entering into any business relationship with any other party
- d. Any feedback (including suggestions, data and/or written materials) provided by a Recipient of Information regarding the Discloser's products or services (or future plans about them) shall not be subject to any obligation of confidentiality under this Agreement, provided that there shall be no right to identify a party as the source of any such feedback.

DELEGATION OF AUTHORITY

I, Jon J. Bancone, Associate General Counsel, IBM North America Sales & Distribution, do hereby certify that said Associate General Counsel, in accordance with and pursuant to resolutions of the Board of Directors of International Business Machines Corporation ("IBM") duly adopted at a meeting duly held and called on April 25, 1994, and those certain Letters of Authority dated November 15, 1995, and May 6, 2011, has been duly authorized to execute and deliver in the name of and on behalf of IBM any contract or other document or instrument necessary or appropriate in the ordinary course of IBM's business, including, but not limited, to bid documents for the sale of IBM products and services to federal, state and local governments and agencies, purchase orders and sales agreements, and the like, and to delegate this authorization within the IBM organization in the United States, including Puerto Rico; and that said authorization has not been modified, amended or rescinded and continues in full force and effect. So authorized, I hereby delegate said authority to execute and deliver in the name of and on behalf of IBM any such contract or other document or instrument reasonably related to, or performed in accordance with, the job duties, and/or responsibilities of the persons holding the below listed positions in the IBM organization in the United States, including Puerto Rico:

President
Treasurer
Vice President
General Manager
Partner
Associate Partner

Position titles that include the words:

Counsel
Attorney
Director
Executive
Sales Manager
Program Manager
Sales Representative
Sales Specialist
Contracts & Negotiations
Client Manager
Project Manager
Business Operations Manager
Client Relationship Representative
Client Unit Executive
Customer Fulfillment Manager
Customer Fulfillment Professional
Service Delivery Manager
Service Delivery Executive
Software Engineer
System Service Representative

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said International Business Machines Corporation on this 16th day of May 2011.


Jon J. Bancone
Associate General Counsel
IBM North America Sales & Distribution

Jon J. Bancone Delegation of Authority

**ECONOMIC DISCLOSURE STATEMENT
AND EXECUTION DOCUMENT
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**INSTRUCTIONS FOR COMPLETION OF
ECONOMIC DISCLOSURE STATEMENT AND EXECUTION DOCUMENT**

This Economic Disclosure Statement and Execution Document ("EDS") is to be completed and executed by every Bidder on a County contract, every party responding to a Request for Proposals or Request for Qualifications ("Proposer"), and others as required by the Chief Procurement Officer. If the Undersigned is awarded a contract pursuant to the procurement process for which this EDS was submitted (the "Contract"), this Economic Disclosure Statement and Execution Document shall stand as the Undersigned's execution of the Contract.

Definitions. Capitalized terms used in this EDS and not otherwise defined herein shall have the meanings given to such terms in the Instructions to Bidders, General Conditions, Request for Proposals, Request for Qualifications, or other documents, as applicable.

"Affiliated Entity" means a person or entity that, directly or indirectly: controls the Bidder, is controlled by the Bidder, or is, with the Bidder, under common control of another person or entity. Indicia of control include, without limitation, interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and organization of a business entity following the ineligibility of a business entity to do business with the County under the standards set forth in the Certifications included in this EDS, using substantially the same management, ownership or principals as the ineligible entity.

"Bidder," "Proposer," "Undersigned," or "Applicant," is the person or entity executing this EDS. Upon award and execution of a Contract by the County, the Bidder, Proposer, Undersigned or Applicant, as the case may be, shall become the Contractor or Contracting Party.

"Proposal," for purposes of this EDS, is the Undersigned's complete response to an RFP/RFQ, or if no RFQ/RFP was issued by the County, the "Proposal" is such other proposal, quote or offer submitted by the Undersigned, and in any event a "Proposal" includes this EDS .

"Code" means the Code of Ordinances, Cook County, Illinois available through the Cook County Clerk's Office website (<http://www.cookctyclerk.com/sub/ordinances.asp>). This page can also be accessed by going to www.cookctyclerk.com, clicking on the tab labeled "County Board Proceedings," and then clicking on the link to "Cook County Ordinances."

"Contractor" or "Contracting Party" means the Bidder, Proposer or Applicant with whom the County has entered into a Contract.

"EDS" means this complete Economic Disclosure Statement and Execution Document, including all sections listed in the Index and any attachments.

"Lobby" or "lobbying" means to, for compensation, attempt to influence a County official or County employee with respect to any County matter.

"Lobbyist" means any person or entity who lobbies.

"Prohibited Acts" means any of the actions or occurrences which form the basis for disqualification under the Code, or under the Certifications hereinafter set forth.

Sections 1 through 3: MBE/WBE Documentation. Sections 1 and 2 must be completed in order to satisfy the requirements of the County's MBE/WBE Ordinance, as set forth in the Contract Documents, if applicable. If the Undersigned believes a waiver is appropriate and necessary, Section 3, the Petition for Waiver of MBE/WBE Participation must be completed.

Section 4: Certifications. Section 4 sets forth certifications that are required for contracting parties under the Code. Execution of this EDS constitutes a warranty that all the statements and certifications contained, and all the facts stated, in the Certifications are true, correct and complete as of the date of execution.

Section 5: Economic and Other Disclosures Statement. Section 5 is the County's required Economic and Other Disclosures Statement form. Execution of this EDS constitutes a warranty that all the information provided in the EDS is true, correct and complete as of the date of execution, and binds the Undersigned to the warranties, representations, agreements and acknowledgements contained therein.

**INSTRUCTIONS FOR COMPLETION OF
ECONOMIC DISCLOSURE STATEMENT AND EXECUTION DOCUMENT**

Sections 6, 7, 8, 9: Execution Forms. The Bidder executes this EDS, and the Contract, by completing and signing three copies of the appropriate Signature Page. Section 6 is the form for a sole proprietor; Section 7 is the form for a partnership or joint venture; Section 8 is the form for a Limited Liability Corporation, and Section 9 is the form for a corporation. Proper execution requires **THREE ORIGINALS**; therefore, the appropriate Signature Page must be filled in, three copies made, and all three copies must be properly signed, notarized and submitted. The forms may be printed and completed by typing or hand writing the information required.

Required Updates. The information provided in this EDS will be kept current. In the event of any change in any information provided, including but not limited to any change which would render inaccurate or incomplete any certification or statement made in this EDS, the Undersigned will supplement this EDS up to the time the County takes action, by filing an amended EDS or such other documentation as is requested.

Additional Information. The County's Governmental Ethics and Campaign Financing Ordinances, impose certain duties and obligations on persons or entities seeking County contracts, work, business, or transactions. For further information please contact the Director of Ethics at (312) 603-4304 (69 W. Washington St. Suite 3040, Chicago, IL 60602) or visit our web-site at www.cookcountygov.com and go to the Ethics Department link. The Bidder must comply fully with the applicable ordinances.

MBE/WBE UTILIZATION PLAN (SECTION 1)

BIDDER/PROPOSER HEREBY STATES that all MBE/WBE firms included in this Plan are certified MBEs/WBEs by at least one of the entities listed in the General Conditions.

I. BIDDER/PROPOSER MBE/WBE STATUS: (check the appropriate line)

_____ Bidder/Proposer is a certified MBE or WBE firm. (If so, attach copy of appropriate Letter of Certification)

_____ Bidder/Proposer is a Joint Venture and one or more Joint Venture partners are certified MBEs or WBEs. (If so, attach copies of Letter(s) of Certification, a copy of Joint Venture Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership interest in the Joint Venture and a completed Joint Venture Affidavit – available from the Office of Contract Compliance)

_____ Bidder/Proposer is not a certified MBE or WBE firm, nor a Joint Venture with MBE/WBE partners, but will utilize MBE and WBE firms either directly or indirectly in the performance of the Contract. (If so, complete Sections II and III).

II. **Direct Participation of MBE/WBE Firms** **Indirect Participation of MBE/WBE Firms**

Where goals have not been achieved through direct participation, Bidder/Proposer shall include documentation outlining efforts to achieve Direct Participation at the time of Bid/Proposal submission. Indirect Participation will only be considered after all efforts to achieve Direct Participation have been exhausted. Only after written documentation of Good Faith Efforts is received will Indirect Participation be considered.

MBEs/WBEs that will perform as subcontractors/suppliers/consultants include the following:

MBE/WBE Firm: _____

Address: _____

E-mail: _____

Contact Person: _____ Phone: _____

Dollar Amount Participation: \$ _____

Percent Amount of Participation: _____ %

*Letter of Intent attached? Yes _____ No _____

*Letter of Certification attached? Yes _____ No _____

MBE/WBE Firm: _____

Address: _____

E-mail: _____

Contact Person: _____ Phone: _____

Dollar Amount Participation: \$ _____

Percent Amount of Participation: _____ %

*Letter of Intent attached? Yes _____ No _____

*Letter of Certification attached? Yes _____ No _____

Attach additional sheets as needed.

***Additionally, all Letters of Intent, Letters of Certification and documentation of Good Faith Efforts omitted from this bid/proposal must be submitted to the Office of Contract Compliance so as to assure receipt by the Contract Compliance Administrator not later than three (3) business days after the Bid Opening date.**

COOK COUNTY GOVERNMENT LETTER OF INTENT (SECTION 2)

M/WBE Firm: _____

Certifying Agency: _____

Address: _____

Certification Expiration Date: _____

City/State: _____ Zip _____

FEIN #: _____

Phone: _____ Fax: _____

Contact Person: _____

Email: _____

Contract #: _____

Participation: Direct Indirect

Will the M/WBE firm be subcontracting any of the performance of this contract to another firm?

No Yes – Please attach explanation. Proposed Subcontractor: _____

The undersigned M/WBE is prepared to provide the following Commodities/Services for the above named Project/ Contract:

Indicate the **Dollar Amount**, or **Percentage**, and the **Terms of Payment** for the above-described Commodities/ Services:

(If more space is needed to fully describe M/WBE Firm's proposed scope of work and/or payment schedule, attach additional sheets)

THE UNDERSIGNED PARTIES AGREE that this Letter of Intent will become a binding Subcontract Agreement conditioned upon the Bidder/Proposer's receipt of a signed contract from the County of Cook. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

Signature (M/WBE)

Signature (Prime Bidder/Proposer)

Print Name

Print Name

Firm Name

Firm Name

Date

Date

Subscribed and sworn before me

Subscribed and sworn before me

this ___ day of _____, 20___.

this ___ day of _____, 20___.

Notary Public _____

Notary Public _____

SEAL

SEAL

PETITION FOR WAIVER OF MBE/WBE PARTICIPATION (SECTION 3)

A. BIDDER/PROPOSER HEREBY REQUESTS:

- FULL MBE WAIVER** **FULL WBE WAIVER**
- REDUCTION (PARTIAL MBE and/or WBE PARTICIPATION)**
- _____ % of Reduction for MBE Participation
_____ % of Reduction for WBE Participation

B. REASON FOR FULL/REDUCTION WAIVER REQUEST

Bidder/Proposer shall check each item applicable to its reason for a waiver request. Additionally, supporting documentation shall be submitted with this request. If such supporting documentation cannot be submitted with bid/proposal/quotation, such documentation shall be submitted directly to the Office of Contract Compliance no later than three (3) days from the date of submission date.

- (1) Lack of sufficient qualified MBEs and/or WBEs capable of providing the goods or services required by the contract. **(Please explain)** *See Attached*
- (2) The specifications and necessary requirements for performing the contract make it impossible or economically infeasible to divide the contract to enable the contractor to utilize MBEs and/or WBEs in accordance with the applicable participation. **(Please explain)** *See Attached*
- (3) Price(s) quoted by potential MBEs and/or WBEs are above competitive levels and increase cost of doing business and would make acceptance of such MBE and/or WBE bid economically impracticable, taking into consideration the percentage of total contract price represented by such MBE and/or WBE bid. **(Please explain)**
- (4) There are other relevant factors making it impossible or economically infeasible to utilize MBE and/or WBE firms. **(Please explain)**

C. GOOD FAITH EFFORTS TO OBTAIN MBE/WBE PARTICIPATION

- (1) Made timely written solicitation to identified MBEs and WBEs for utilization of goods and/or services; and provided MBEs and WBEs with a timely opportunity to review and obtain relevant specifications, terms and conditions of the proposal to enable MBEs and WBEs to prepare an informed response to solicitation. **(Please attach)**
- (2) Followed up initial solicitation of MBEs and WBEs to determine if firms are interested in doing business. **(Please attach)**
- (3) Advertised in a timely manner in one or more daily newspapers and/or trade publication for MBEs and WBEs for supply of goods and services. **(Please attach)**
-
- (4) Used the services and assistance of the Office of Contract Compliance staff. **(Please explain)**
- (5) Engaged MBEs & WBEs for indirect participation. **(Please explain)**

D. OTHER RELEVANT INFORMATION

Attach any other documentation relative to Good Faith Efforts in complying with MBE/WBE participation.

71 S. Wacker Dr.
Chicago, IL 60606

June 5, 2013

Ms. Tangel Malloy
Senior Contract Negotiator
Office of the Chief Procurement Officer – Cook County
118 N Clark Street Room 1018
Chicago, Illinois 60602

RE: WebSphere Message Broker - Subscription and Support Maintenance

Dear Ms. Malloy:

Thank you for the opportunity to continue to provide the Clerk of the Circuit Court of Cook County with annual software maintenance service for the IBM WebSphere Message Broker licenses. This software maintenance service is made available to all of our customers and can only be provided directly from IBM.

If you have any questions, please feel free to call me at 630.706.0861.



Kevin Hilbrant
WebSphere Sales Specialist
IBM Corporation
71 S Wacker Dr.
Chicago, IL 60606

CERTIFICATIONS (SECTION 4)

THE FOLLOWING CERTIFICATIONS ARE MADE PURSUANT TO STATE LAW AND THE CODE. THE UNDERSIGNED IS CAUTIONED TO CAREFULLY READ THESE CERTIFICATIONS PRIOR TO SIGNING THE SIGNATURE PAGE. SIGNING THE SIGNATURE PAGE SHALL CONSTITUTE A WARRANTY BY THE UNDERSIGNED THAT ALL THE STATEMENTS, CERTIFICATIONS AND INFORMATION SET FORTH WITHIN THESE CERTIFICATIONS ARE TRUE, COMPLETE AND CORRECT AS OF THE DATE THE SIGNATURE PAGE IS SIGNED. THE UNDERSIGNED IS NOTIFIED THAT IF THE COUNTY LEARNS THAT ANY OF THE FOLLOWING CERTIFICATIONS WERE FALSELY MADE, THAT ANY CONTRACT ENTERED INTO WITH THE UNDERSIGNED SHALL BE SUBJECT TO TERMINATION.

A. PERSONS AND ENTITIES SUBJECT TO DISQUALIFICATION

No person or business entity shall be awarded a contract or sub-contract, for a period of five (5) years from the date of conviction or entry of a plea or admission of guilt, civil or criminal, if that person or business entity:

- 1) Has been convicted of an act committed, within the State of Illinois, of bribery or attempting to bribe an officer or employee of a unit of state, federal or local government or school district in the State of Illinois in that officer's or employee's official capacity;
- 2) Has been convicted by federal, state or local government of an act of bid-rigging or attempting to rig bids as defined in the Sherman Anti-Trust Act and Clayton Act. Act. 15 U.S.C. Section 1 *et seq.*;
- 3) Has been convicted of bid-rigging or attempting to rig bids under the laws of federal, state or local government;
- 4) Has been convicted of an act committed, within the State, of price-fixing or attempting to fix prices as defined by the Sherman Anti-Trust Act and the Clayton Act. 15 U.S.C. Section 1, *et seq.*;
- 5) Has been convicted of price-fixing or attempting to fix prices under the laws the State;
- 6) Has been convicted of defrauding or attempting to defraud any unit of state or local government or school district within the State of Illinois;
- 7) Has made an admission of guilt of such conduct as set forth in subsections (1) through (6) above which admission is a matter of record, whether or not such person or business entity was subject to prosecution for the offense or offenses admitted to; or
- 8) Has entered a plea of *nolo contendere* to charge of bribery, price-fixing, bid-rigging, or fraud, as set forth in sub-paragraphs (1) through (6) above.

In the case of bribery or attempting to bribe, a business entity may not be awarded a contract if an official, agent or employee of such business entity committed the Prohibited Act on behalf of the business entity and pursuant to the direction or authorization of an officer, director or other responsible official of the business entity, and such Prohibited Act occurred within three years prior to the award of the contract. In addition, a business entity shall be disqualified if an owner, partner or shareholder controlling, directly or indirectly, 20 % or more of the business entity, or an officer of the business entity has performed any Prohibited Act within five years prior to the award of the Contract.

THE UNDERSIGNED HEREBY CERTIFIES THAT: The Undersigned has read the provisions of Section A, Persons and Entities Subject to Disqualification, that the Undersigned has not committed any Prohibited Act set forth in Section A, and that award of the Contract to the Undersigned would not violate the provisions of such Section or of the Code.

B. BID-RIGGING OR BID ROTATING

THE UNDERSIGNED HEREBY CERTIFIES THAT: *In accordance with 720 ILCS 5/33 E-11, neither the Undersigned nor any Affiliated Entity is barred from award of this Contract as a result of a conviction for the violation of State laws prohibiting bid-rigging or bid rotating.*

C. DRUG FREE WORKPLACE ACT

THE UNDERSIGNED HEREBY CERTIFIES THAT: The Undersigned will provide a drug free workplace, as required by Public Act 86-1459 (30 ILCS 580/2-11).

D. DELINQUENCY IN PAYMENT OF TAXES

THE UNDERSIGNED HEREBY CERTIFIES THAT: *The Undersigned is not an owner or a party responsible for the payment of any tax or fee administered by Cook County, by a local municipality, or by the Illinois Department of Revenue, which such tax or fee is delinquent, such as bar award of a contract or subcontract pursuant to the Code, Chapter 34, Section 34-129.*

E. HUMAN RIGHTS ORDINANCE

No person who is a party to a contract with Cook County ("County") shall engage in unlawful discrimination or sexual harassment against any individual in the terms or conditions of employment, credit, public accommodations, housing, or provision of County facilities, services or programs (Code Chapter 42, Section 42-30 *et seq.*).

F. ILLINOIS HUMAN RIGHTS ACT

THE UNDERSIGNED HEREBY CERTIFIES THAT: *It is in compliance with the the Illinois Human Rights Act (775 ILCS 5/2-105), and agrees to abide by the requirements of the Act as part of its contractual obligations.*

G. MACBRIDE PRINCIPLES, CODE CHAPTER 34, SECTION 34-132

If the primary contractor currently conducts business operations in Northern Ireland, or will conduct business during the projected duration of a County contract, the primary contractor shall make all reasonable and good faith efforts to conduct any such business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390.

H. LIVING WAGE ORDINANCE PREFERENCE (COOK COUNTY CODE, CHAPTER 34, SECTION 34-127;

The Code requires that a living wage must be paid to individuals employed by a Contractor which has a County Contract and by all subcontractors of such Contractor under a County Contract, throughout the duration of such County Contract. The amount of such living wage is determined from time to time by, and is available from, the Chief Financial Officer of the County.

For purposes of this EDS Section 4, H, "Contract" means any written agreement whereby the County is committed to or does expend funds in connection with the agreement or subcontract thereof. The term "Contract" as used in this EDS, Section 4, I, specifically excludes contracts with the following:

- 1) Not-For Profit Organizations (defined as a corporation having tax exempt status under Section 501(C)(3) of the United State Internal Revenue Code and recognized under the Illinois State not-for -profit law);
- 2) Community Development Block Grants;
- 3) Cook County Works Department;
- 4) Sheriff's Work Alternative Program; and
- 5) Department of Correction inmates.

REQUIRED DISCLOSURES (SECTION 5)

1. DISCLOSURE OF LOBBYIST CONTACTS

List all persons or entities that have made lobbying contacts on your behalf with respect to this contract:

Name

Address

NA → No

2. LOCAL BUSINESS PREFERENCE DISCLOSURE; CODE, CHAPTER 34, SECTION 34-151(p);

"Local Business" shall mean a person authorized to transact business in this State and having a bona fide establishment for transacting business located within Cook County at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced and further which employs the majority of its regular, full time work force within Cook County, including a foreign corporation duly authorized to transact business in this State and which has a bona fide establishment for transacting business located within Cook County at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced and further which employs the majority of its regular, full time work force within Cook County.

a) Is Bidder a "Local Business" as defined above?

Yes: _____ No: X

b) If yes, list business addresses within Cook County:

c) Does Bidder employ the majority of its regular full-time workforce within Cook County?

Yes: _____ No: X

3. THE CHILD SUPPORT ENFORCEMENT ORDINANCE (PREFERENCE (CODE, CHAPTER 34, SECTION 34-366)

Every Applicant for a County Privilege shall be in full compliance with any child support order before such Applicant is entitled to receive or renew a County Privilege. When delinquent child support exists, the County shall not issue or renew any County Privilege, and may revoke any County Privilege.

All Applicants are required to review the Cook County Affidavit of Child Support Obligations attached to this EDS (EDS-8) and complete the following, based upon the definitions and other information included in such Affidavit.

4. REAL ESTATE OWNERSHIP DISCLOSURES.

The Undersigned must indicate by checking the appropriate provision below and providing all required information that either:

- a) The following is a complete list of all real estate owned by the Undersigned in Cook County:

PERMANENT INDEX NUMBER(S): _____

(ATTACH SHEET IF NECESSARY TO LIST ADDITIONAL INDEX NUMBERS)

OR:

- b) The Undersigned owns no real estate in Cook County.

5. EXCEPTIONS TO CERTIFICATIONS OR DISCLOSURES.

If the Undersigned is unable to certify to any of the Certifications or any other statements contained in this EDS and not explained elsewhere in this EDS, the Undersigned must explain below:

If the letters, "NA", the word "None" or "No Response" appears above, or if the space is left blank, it will be conclusively presumed that the Undersigned certified to all Certifications and other statements contained in this EDS.

COOK COUNTY AFFIDAVIT OF CHILD SUPPORT OBLIGATIONS

Effective July 1, 1998, every applicant for a County Privilege shall be in full compliance with any Child Support Order before such applicant is entitled to receive a County Privilege. When Delinquent Child Support Exists, the County shall not issue or renew any County Privilege, and may revoke any County Privilege.

"Applicant" means any person or business entity, including all Substantial Owners, seeking issuance of a County Privilege or renewal of an existing County Privilege from the County. This term shall not include any political subdivision of the federal or state government, including units of local government, and not-for-profit organizations.

"County Privilege" means any business license, including but not limited to liquor dealers' licenses, packaged goods licenses, tavern licenses, restaurant licenses, and gun licenses; real property license or lease; permit, including but not limited to building permits, zoning permits or approvals; environmental certificate; County HOME Loan, and contracts exceeding the value of \$10,000.00.

"Substantial Owner" means any person or persons who own or hold a twenty-five percent (25%) or more percentage of interest in any business entity seeking a County Privilege, including those shareholders, general or limited partners, beneficiaries and principals; except where a business entity is an individual or sole proprietorship, Substantial Owner means that individual or sole proprietor.

All Applicants/Substantial Owners are required to complete this affidavit and comply with the Child Support Enforcement Ordinance before any privilege is granted. Signature of this form constitutes a certification the information provided below is correct and complete, and that the individual(s) signing this form has/have personal knowledge of such information.

Privilege Information:

No - Corporation

County Privilege: _____

County Department: _____

Applicant Information:

Last name: _____ First Name: _____ MI: _____

SS# (Last Four Digits): _____ Date of Birth: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Home Phone: (____) _____ - _____ Drivers License No: _____

Child Support Obligation Information:

The Undersigned applicant, being duly sworn on oath or affirmation hereby states that to the best of my knowledge (place an "X" next to "A", "B", "C", or "D").

- _____ A. The Applicant has no judicially or administratively ordered child support obligations.
- _____ B. The Applicant has an outstanding judicially or administratively ordered obligation, but is paying in accordance with the terms of the order.
- X C. The Applicant is delinquent in paying judicially or administratively ordered child support obligations
- _____ D. The Applicant is not a substantial owner as defined above.

The Undersigned applicant understands that failure to disclose any judicially or administratively ordered child support debt owed will be grounds for revoking the privilege.

Signature: *Shirin Kamal*

Date: 6/5/2013

Subscribed and sworn to before me this 5th day of JUNE

X *[Signature]*
Notary Public Signature



Note: The above information is subject to verification prior to the award of the contract.

COOK COUNTY DISCLOSURE OF OWNERSHIP INTEREST STATEMENT

The Cook County Code of Ordinances (§2-610 *et seq.*) requires that any Applicant for any County Action must disclose information concerning ownership interests in the Applicant. This Disclosure of Ownership Interest Statement must be completed with all information current as of the date this Statement is signed. Furthermore, this Statement must be kept current, by filing an amended Statement, until such time as the County Board or County Agency shall take action on the application. The information contained in this Statement will be maintained in a database and made available for public viewing.

If you are asked to list names, but there are no applicable names to list, you must state NONE. An incomplete Statement will be returned and any action regarding this contract will be delayed. A failure to fully comply with the ordinance may result in the action taken by the County Board or County Agency being voided.

"Applicant" means any Entity or person making an application to the County for any County Action.

"County Action" means any action by a County Agency, a County Department, or the County Board regarding an ordinance or ordinance amendment, a County Board approval, or other County agency approval, with respect to contracts, leases, or sale or purchase of real estate.

"Entity" or "Legal Entity" means a sole proprietorship, corporation, partnership, association, business trust, estate, two or more persons having a joint or common interest, trustee of a land trust, other commercial or legal entity or any beneficiary or beneficiaries thereof.

This Disclosure of Ownership Interest Statement must be submitted by :

1. An Applicant for County Action and
2. An individual or Legal Entity that holds stock or a beneficial interest in the Applicant and is listed on the Applicant's Statement (a "Holder") must file a Statement and complete #1 only under **Ownership Interest Declaration**.

Please print or type responses clearly and legibly. Add additional pages if needed, being careful to identify each portion of the form to which each additional page refers.

This Statement is being made by the Applicant or Stock/Beneficial Interest Holder

This Statement is an: Original Statement or Amended Statement

Identifying Information:

Name IBM Corp. D/B/A: _____ EIN NO.: 13-087-1985

Street Address: 71 S Wacker

City: Chicago State: IL Zip Code: 60606

Phone No.: 312-529-3828

Form of Legal Entity:

- Sole Proprietor Partnership Corporation Trustee of Land Trust
- Business Trust Estate Association Joint Venture
- Other (describe) _____

Ownership Interest Declaration:

1. List the name(s), address, and percent ownership of each individual and each Entity having a legal or beneficial interest (including ownership) of more than five percent (5%) in the Applicant/Holder.

| Name | Address | Percentage Interest in Applicant/Holder |
|----------------------------|---------|---|
| NA - No Substantial Owners | | |

2. If the interest of any individual or any Entity listed in (1) above is held as an agent or agents, or a nominee or nominees, list the name and address of the principal on whose behalf the interest is held.

| Name of Agent/Nominee | Name of Principal | Principal's Address |
|-----------------------|-------------------|---------------------|
| NA | | |

3. Is the Applicant constructively controlled by another person or Legal Entity? [] Yes [] No
If yes, state the name, address and percentage of beneficial interest of such person or legal entity, and the relationship under which such control is being or may be exercised.

| Name | Address | Percentage of Beneficial Interest | Relationship |
|------|---------|-----------------------------------|--------------|
| | | | |

Declaration (check the applicable box):

- I state under oath that the Applicant has withheld no disclosure as to ownership interest in the Applicant nor reserved any information, data or plan as to the intended use or purpose for which the Applicant seeks County Board or other County Agency action.
- I state under oath that the Holder has withheld no disclosure as to ownership interest nor reserved any information required to be disclosed.

Kevin Hilbrant
Name of Authorized Applicant/Holder Representative (please print or type)

Sales Representative
Title

Kevin Hilbrant
Signature

6/5/13
Date

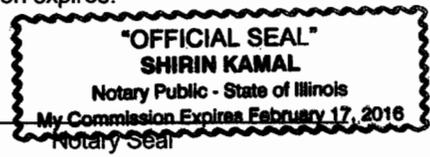
E-mail address

630.706.0861
Phone Number

Subscribed to and sworn before me this 5th day of June 2013

My commission expires:

X [Signature]
Notary Public Signature





COOK COUNTY BOARD OF ETHICS

69 W. WASHINGTON STREET, SUITE 3040

CHICAGO, ILLINOIS 60602

312/603-4304

312/603-9988 FAX 312/603-1011 TT/TDD

FAMILIAL RELATIONSHIP DISCLOSURE PROVISION:

Section 2-582 of the Cook County Ethics Ordinance requires any person or persons doing business with Cook County, upon execution of a contract with Cook County, to disclose to the Cook County Board of Ethics the existence of familial relationships they may have with all persons holding elective office in the State of Illinois, the County of Cook, or in any municipality within the County of Cook.

The disclosure required by this section shall be filed by January 1 of each calendar year or within thirty (30) days of the execution of any contract or lease. Any person filing a late disclosure statement after January 31 shall be assessed a late filing fee of \$100.00 per day that the disclosure is late. Any person found guilty of violating any provision of this section or knowingly filing a false, misleading, or incomplete disclosure to the Cook County Board of Ethics shall be prohibited, for a period of three (3) years, from engaging, directly or indirectly, in any business with Cook County. *Note:* Please see Chapter 2 Administration, Article VII Ethics, Section 2-582 of the Cook County Code to view the full provisions of this section.

If you have questions concerning this disclosure requirement, please call the Cook County Board of Ethics at (312) 603-4304.

Note: A current list of contractors doing business with Cook County is available via the Cook County Board of Ethics' website at:

http://www.cookcountygov.com/taxonomy/ethics/Listings/cc_ethics_VendorList_.pdf

DEFINITIONS:

"*Calendar year*" means January 1 to December 31 of each year.

"*Doing business*" for this Ordinance provision means any one or any combination of leases, contracts, or purchases to or with Cook County or any Cook County agency in excess of \$25,000 in any calendar year.

"*Familial relationship*" means a person who is related to an official or employee as spouse or any of the following, whether by blood, marriage or adoption:

- | | | |
|-----------|-------------------|----------------|
| ▪ Parent | ▪ Grandparent | ▪ Stepfather |
| ▪ Child | ▪ Grandchild | ▪ Stepmother |
| ▪ Brother | ▪ Father-in-law | ▪ Stepson |
| ▪ Sister | ▪ Mother-in-law | ▪ Stepdaughter |
| ▪ Aunt | ▪ Son-in-law | ▪ Stepbrother |
| ▪ Uncle | ▪ Daughter-in-law | ▪ Stepsister |
| ▪ Niece | ▪ Brother-in-law | ▪ Half-brother |
| ▪ Nephew | ▪ Sister-in-law | ▪ Half-sister |

"*Person*" means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, and whether or not operated for profit.

SWORN FAMILIAL RELATIONSHIP DISCLOSURE FORM

Pursuant to Section 2-582 of the Cook County Ethics Ordinance, any *person* doing business** with Cook County must disclose, to the Cook County Board of Ethics, the existence of *familial relationships** to any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County. Please print your responses.

Name of Owner/Employee: _____ Title: _____

Business Entity Name: _____ Phone: _____

Business Entity Address: _____

_____ The following familial relationship exists between the owner or any employee of the business entity contracted to do business with Cook County *and* any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County.

| Owner/Employee Name: | Related to: | Relationship: |
|----------------------|-------------|---------------|
| 1. _____ | _____ | _____ |
| 2. _____ | _____ | _____ |
| 3. _____ | _____ | _____ |
| 4. _____ | _____ | _____ |
| 5. _____ | _____ | _____ |

If more space is needed, attach an additional sheet following the above format.

There is *no* familial relationship that exists between the owner or any employee of the business entity contracted to do business with Cook County and any person holding elective office in the State of Illinois, Cook County, or in any municipality within Cook County.

To the best of my knowledge and belief, the information provided above is true and complete.

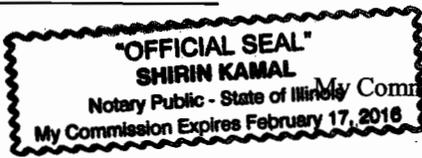
Kevin K. Grant _____
Owner/Employee's Signature Date

Subscribe and sworn before me this 5th Day of June, 2013

a Notary Public in and for Will County

[Signature]
(Signature)

NOTARY PUBLIC
SEAL



My Commission expires Feb. 17 2016

Completed forms must be filed within 30 days of the execution of any contract or lease with Cook County and should be mailed to:

Cook County Board of Ethics
69 West Washington Street,
Suite 3040
Chicago, Illinois 60602

SIGNATURE BY A SOLE PROPRIETOR
(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

Subscribed to and sworn before me this

_____ day of _____, 20__.

My commission expires:

X _____
Notary Public Signature

Notary Seal

SIGNATURE BY A SOLE PROPRIETOR
(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

Subscribed to and sworn before me this

_____ day of _____, 20__.

My commission expires:

X _____
Notary Public Signature

Notary Seal

SIGNATURE BY A SOLE PROPRIETOR

(SECTION 6)

The Undersigned hereby certifies and warrants: that all of the statements, certifications and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

FEIN/SSN: _____

COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SOLE PROPRIETOR'S SIGNATURE: _____

PRINT NAME: _____

DATE: _____

Subscribed to and sworn before me this

_____ day of _____, 20__.

My commission expires:

X _____

Notary Public Signature

Notary Seal

SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)
(SECTION 7)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege. .

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____ FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

Date: _____

Subscribed to and sworn before me this

_____ day of _____, 20__.

My commission expires:

X _____
Notary Public Signature

Notary Seal

* **Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.**

SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)
(SECTION 7)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege. .

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____ FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

Date: _____

Subscribed to and sworn before me this

_____ day of _____, 20__.

My commission expires:

X _____

Notary Public Signature

Notary Seal

* **Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.**

SIGNATURE BY A PARTNERSHIP (AND/OR A JOINT VENTURE)
(SECTION 7)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege. .

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____ FEIN/SSN: _____

*COOK COUNTY BUSINESS REGISTRATION NUMBER: _____

SIGNATURE OF PARTNER AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF PARTNERSHIP:

*BY: _____

Date: _____

Subscribed to and sworn before me this
_____ day of _____, 20__.

My commission expires:

X _____
Notary Public Signature

Notary Seal

* **Attach hereto a partnership resolution or other document authorizing the individual signing this Signature Page to so sign on behalf of the Partnership.**

SIGNATURE BY A LIMITED LIABILITY CORPORATION
(SECTION 8)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Procurement Director in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ * CORPORATE FILE NUMBER: _____

MANAGING MEMBER: _____ MANAGING MEMBER: _____

**SIGNATURE OF MANAGER: _____

ATTEST: _____

Subscribed and sworn to before me this
_____ day of _____, 20_____.

X _____
Notary Public Signature

Notary Seal

* **If the LLC is not registered in the State of Illinois, a copy of a current Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.**

** **Attach either a certified copy of the by-laws, articles, resolution or other authorization demonstrating such persons to sign the Signature Page on behalf of the LLC.**

SIGNATURE BY A LIMITED LIABILITY CORPORATION
(SECTION 8)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Procurement Director in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ * CORPORATE FILE NUMBER: _____

MANAGING MEMBER: _____ MANAGING MEMBER: _____

**SIGNATURE OF MANAGER: _____

ATTEST: _____

Subscribed and sworn to before me this

_____ day of _____, 20_____.

X _____
Notary Public Signature

Notary Seal

*** If the LLC is not registered in the State of Illinois, a copy of a current Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.**

**** Attach either a certified copy of the by-laws, articles, resolution or other authorization demonstrating such persons to sign the Signature Page on behalf of the LLC.**

SIGNATURE BY A LIMITED LIABILITY CORPORATION
(SECTION 8)

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Procurement Director in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: _____ FAX NUMBER: _____

CONTACT PERSON: _____

FEIN: _____ * CORPORATE FILE NUMBER: _____

MANAGING MEMBER: _____ MANAGING MEMBER: _____

**SIGNATURE OF MANAGER: _____

ATTEST: _____

Subscribed and sworn to before me this
_____ day of _____, 20_____.

X _____
Notary Public Signature

Notary Seal

* **If the LLC is not registered in the State of Illinois, a copy of a current Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.**

** **Attach either a certified copy of the by-laws, articles, resolution or other authorization demonstrating such persons to sign the Signature Page on behalf of the LLC.**

**SIGNATURE BY A CORPORATION
(SECTION 9)**

The Undersigned hereby certifies and warrants: that all of the statements, certifications, and representations set forth in this EDS are true, complete and correct; that the Undersigned is in full compliance and will continue to be in compliance throughout the term of the Contract or County Privilege issued to the Undersigned with all the policies and requirements set forth in this EDS; and that all of the facts and information provided by the Undersigned in this EDS are true, complete and correct. The Undersigned agrees to inform the Chief Procurement Officer in writing if any of such statements, certifications, representations, facts or information becomes or is found to be untrue, incomplete or incorrect during the term of the Contract or County Privilege.

BUSINESS NAME: IBM Corporation
BUSINESS ADDRESS: 71 S Wacker Drive
Chicago, IL 60606
BUSINESS TELEPHONE: 312 529 3828 FAX NUMBER: 312 529 1962
CONTACT PERSON: Kevin Hilbrant
FEIN: 13-0871-1985 *IL CORPORATE FILE NUMBER: 0480-1016

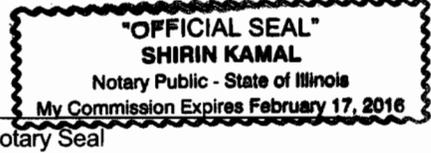
LIST THE FOLLOWING CORPORATE OFFICERS:

PRESIDENT: Virginia Romeltz VICE PRESIDENT: James Kavanaugh
SECRETARY: Michelle Browdy TREASURER: Robert Del Bene
**SIGNATURE OF PRESIDENT: Kevin Hilbrant Sales Specialist
ATTEST: Cathy Hoffman Sales Representative
(CORPORATE SECRETARY)

Subscribed and sworn to before me this
5th day of June, 2013

X [Signature]
Notary Public Signature

My commission expires:



- * If the corporation is not registered in the State of Illinois, a copy of the Certificate of Good Standing from the state of incorporation must be submitted with this Signature Page.
- ** In the event that this Signature Page is signed by any persons than the President and Secretary, attach either a certified copy of the corporate by-laws, resolution or other authorization by the corporation, authorizing such persons to sign the Signature Page on behalf of the corporation.

DELEGATION OF AUTHORITY

I, Jon J. Bancone, Associate General Counsel, IBM North America Sales & Distribution, do hereby certify that said Associate General Counsel, in accordance with and pursuant to resolutions of the Board of Directors of International Business Machines Corporation ("IBM") duly adopted at a meeting duly held and called on April 25, 1994, and those certain Letters of Authority dated November 15, 1995, and May 6, 2011, has been duly authorized to execute and deliver in the name of and on behalf of IBM any contract or other document or instrument necessary or appropriate in the ordinary course of IBM's business, including, but not limited, to bid documents for the sale of IBM products and services to federal, state and local governments and agencies, purchase orders and sales agreements, and the like, and to delegate this authorization within the IBM organization in the United States, including Puerto Rico; and that said authorization has not been modified, amended or rescinded and continues in full force and effect. So authorized, I hereby delegate said authority to execute and deliver in the name of and on behalf of IBM any such contract or other document or instrument reasonably related to, or performed in accordance with, the job duties, and/or responsibilities of the persons holding the below listed positions in the IBM organization in the United States, including Puerto Rico:

President
Treasurer
Vice President
General Manager
Partner
Associate Partner

Position titles that include the words:

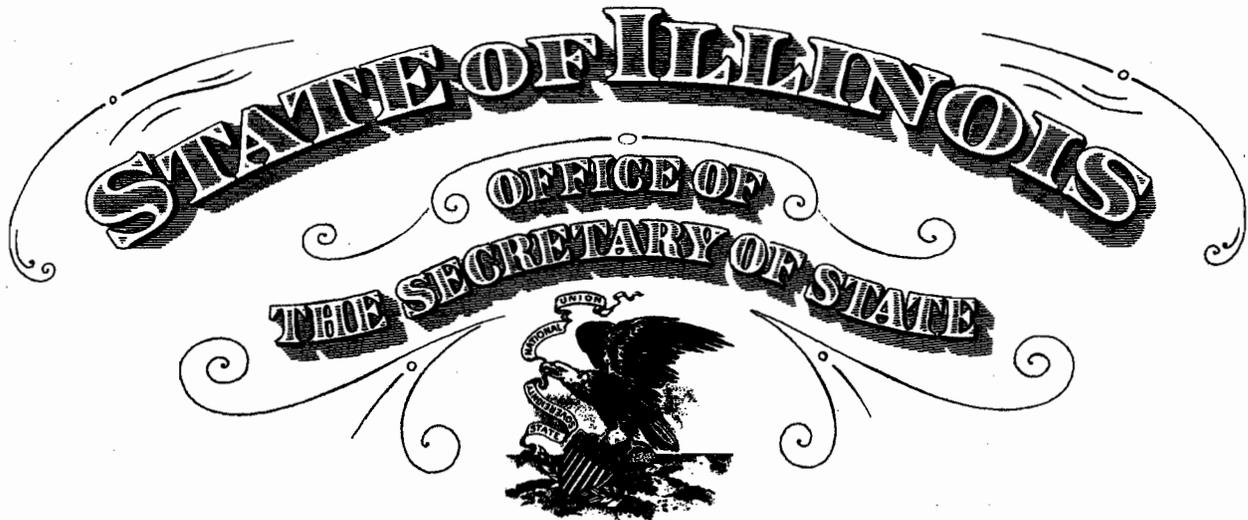
Counsel
Attorney
Director
Executive
Sales Manager
Program Manager
Sales Representative
Sales Specialist
Contracts & Negotiations
Client Manager
Project Manager
Business Operations Manager
Client Relationship Representative
Client Unit Executive
Customer Fulfillment Manager
Customer Fulfillment Professional
Service Delivery Manager
Service Delivery Executive

Software Engineer
System Service Representative

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said International Business Machines Corporation on this 16th day of May 2011.



Jon J. Bancone
Associate General Counsel
IBM North America Sales & Distribution



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that

INTERNATIONAL BUSINESS MACHINES CORPORATION, INCORPORATED IN NEW YORK AND LICENSED TO TRANSACT BUSINESS IN THIS STATE ON SEPTEMBER 07, 1934, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS STATE RELATING TO THE PAYMENT OF FRANCHISE TAXES, AND AS OF THIS DATE, IS A FOREIGN CORPORATION IN GOOD STANDING AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.



Authentication #: 1302401646

Authenticate at: <http://www.cyberdriveillinois.com>

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 24TH day of JANUARY A.D. 2013

Jesse White

SECRETARY OF STATE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/3/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|--|---|---------------------------------|
| PRODUCER Aon Risk Services Northeast, Inc. 199 Water Street New York, NY 10038 Phone: 866.266.7475 Fax: 866.467.7847 | CONTACT NAME: _____ | FAX (A/C, No): _____ |
| | PHONE (A/C, No, Ext): _____ | E-MAIL ADDRESS: _____ |
| INSURED International Business Machines Corp. 1 New Orchard Road Armonk, NY 10504 United States | INSURER(S) AFFORDING COVERAGE COMPANY A: Liberty Mutual Fire Insurance Company COMPANY B: Liberty Mutual Insurance Corporation COMPANY C: National Union Fire Insurance Company of Pittsburgh, PA | NAIC # _____ |

COVERAGES

CERTIFICATE NUMBER: 170741

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|-----------------------|---|---|--|--|--|--|
| | GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | | COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) |
| | <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$ | | | | | EACH OCCURRENCE AGGREGATE |
| A B B B C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N <input type="checkbox"/> No <input type="checkbox"/> N/A | EL2-621-004158-943 (VI) WA5-62D-004158-443 (AOS) ** WA5-62D-004158-673 (MN) WCP-621-004158-153 (WI) EHS-62N-004158-093 (Excess OH) 93-128289 (Guam) | 1/1/2013 1/1/2013 1/1/2013 1/1/2013 1/1/2013 | 1/1/2014 1/1/2014 1/1/2014 1/1/2014 1/1/2014 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

** Includes EL coverage for monopolistic states ND, PR, WA, WY

** (AOS) = All Other States

Please see page 2 for any additional language.

CERTIFICATE HOLDER

Cook County
 118 N Clark St.
 Chicago, Illinois 60602-1304
 United States

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

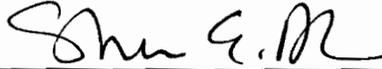
Authorized Representative:
 Aon Risk Services Northeast, Inc.

Aon Risk Services Northeast, Inc.

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COOK COUNTY SIGNATURE PAGE
(SECTION 10)

ON BEHALF OF THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE OF THE STATE OF ILLINOIS, THIS CONTRACT IS HEREBY EXECUTED BY:



COOK COUNTY CHIEF PROCUREMENT OFFICER

DATED AT CHICAGO, ILLINOIS THIS 23 DAY OF July, 2013.

IN THE CASE OF A BID PROPOSAL, THE COUNTY HEREBY ACCEPTS:

THE FOREGOING BID/PROPOSAL AS IDENTIFIED IN THE CONTRACT DOCUMENTS FOR CONTRACT NUMBER

13-90-12420

OR

ITEM(S), SECTION(S), PART(S): _____

TOTAL AMOUNT OF CONTRACT: \$ **67,000.00**
(DOLLARS AND CENTS)

FUND CHARGEABLE: _____

APPROVED AS TO FORM:

NOT REQUIRED

ASSISTANT STATE'S ATTORNEY
(Required on contracts over \$1,000,000.00)