

IBM and State of Arizona Software Agreement

Signature Page for Exhibits

The State of Arizona Originating Agency accepts the terms of this Agreement and any modification made by mutually agreed to amendment(s). The Originating Agency and Mandatory and Permissive Users accepts the terms of this Agreement as amended when licensing software under the Agreement and by following the Quote and PO ordering processes of referencing this Agreement # ADSPO15- 097466 on the Quote and Purchase Order.

For the purposes of this Agreement, the term Enterprise as it applies to the Customer means the State of Arizona by and through its State Procurement Office and the State's Mandatory and Permissive Customers.

Mandatory Customers

The Agreement shall be for the mandatory use of State of Arizona, departments, commissions and boards subject to the authority of the Arizona Procurement Code and the State Procurement Office (Non-exempt State Agencies). Non-exempt State Agencies that have a requirement for the products and/or services within the scope of the Agreement must source their requirement under the contract. Non-exempt State Agencies that have a requirement for the products and/or services within the scope of the Agreement but seek to source their requirement outside of the contract, must obtain prior written authorization.

Permissive Customers

The Agreement shall be for the permissive use of State of Arizona, departments, commissions and boards that are not subject to the authority of the Arizona Procurement Code or the State Procurement Office (Exempt State Agencies) as well as members of the State Purchasing Cooperative (Cooperative Members). Exempt State Agencies and Cooperative Members that have a requirement for the products and/or services within the scope of the Agreement may source their requirement under the Agreement at their sole discretion. In order to participate, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by the A.R.S. 41-2632. An up-to-date list of Cooperative Members, and a copy of the current Cooperative Agreement, may be found at http://azdoa.gov/agencies/spo/api_coop.asp

This Contract ("Contract or Agreement") is comprised of the documents listed below as Exhibits. These documents are the complete agreement regarding these transactions, and replace any prior oral or written communications between us. If there is a conflict among terms in the various documents, those of an Amendment prevail over the document it amends. And those of the IPAA prevail over the IPLA. Those of the Agreement for Programs prevail over the IPLA.

The following Exhibits are incorporated herein and made part of this Agreement.

For the Contract

Exhibit A - State of Arizona Special and Uniform Terms and Conditions

For Distributed Software and Subscription and Support (S&S)

Exhibit B - International Passport Advantage Agreement (IPAA)

For Mainframe Software Monthly License Charge (MLC)

Exhibit C - IBM Agreement for Programs

For Mainframe Software Subscription & Support (S&S)

Exhibit D – IBM Agreement for the Acquisition of Software Maintenance (IAASM)

For All Software under Exhibits B, C and D

Exhibit E – International Program License Agreement (IPLA)

For clarification here, and throughout the Agreement, "Non-IBM Programs" and Third Party software are references to possible software code that may be utilized within an IBM Program. It does not mean this Agreement may be used for the licensing or purchase of software from another software provider or companies other than IBM.

This Agreement shall commence on July 1, 2015 and shall continue for a period of twelve (12) months thereafter, unless terminated according to the Agreement or extended by mutual written agreement. This Agreement may be renewed for an additional four (4) one-year periods by written mutual agreement of the parties.

This Signature Page for Exhibits, including its Exhibits and any Attachment or Transaction Documents is the complete agreement regarding transactions and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between State and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from State (such as a purchase order) are void.

By signing below for our respective Enterprises, each of us agrees to the terms of the Exhibits. Once signed, any reproduction of this page or an Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

State of Arizona

By



Authorized signature

Name: Terri Johnson, Procurement Manager

Date: June 18, 2015

Enterprise number:

State address: 100 N. 15th Avenue, Phoenix, AZ 85007

State Contract #: ADSPO15-097466

Agreed to:

International Business Machines Corporation

By



Authorized signature

Name (type or print): Karen K. Caldwell, Client Executive

Date: June 18, 2015

IBM Agreement number:

IBM address: 2929 N. Central Ave, Phoenix, AZ 85012

Exhibit A – State of Arizona Special and Uniform Terms and Conditions

1. Scrutinized Business Operations. In accordance with A.R.S. 35-391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.

2. E-Verify Requirements. In accordance with A.R.S. 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A.

3. Non-Discrimination. The Contractor shall comply with State Executive Order 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

4. Arizona Law. In accordance with ARS § 41-2501, et seq, and AAC R2-7-101, et seq, Contract shall be governed and interpreted by the laws of the State of Arizona and the Arizona Procurement Code.

5. Audit. Pursuant to A.R.S. §§ 35-214 and 35-215, the Contractor shall retain data, books and other records (“records”) relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times. Upon request the contractor shall produce the original of any or all such records.

6. Availability of Funds. Every payment obligation of the Department under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the legislature resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the Department or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to the Department or any other agency of the State of Arizona in the event this provision is exercised, and neither the Department nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. Amendments. This Agreement may be modified only through an Agreement Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Agreement and of applicable law. Such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on those changes.

8. Indemnification. Contractor will indemnify the State 1) for Distributed Software under the IPAA in accordance with Exhibit B and 2) for ICA Programs under the Agreement for ICA Programs in accordance with Exhibit C. Each party to this contract is responsible for its own negligence.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

9. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

10. Survival of Rights and Obligations after Agreement Expiration or Termination. All representations and warranties made by the Contractor under this Agreement shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
11. Cancellation for Conflict of Interest. In accordance with A.R.S. § 38-511, State may within three years after execution cancel the Contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State, at any time while the Contract is in effect, becomes an employee or agent or any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the matter of the Contract.
12. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Agreement performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
13. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Agreement if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity.. Submittal of an offer or execution of an Agreement shall attest that the contractor is not currently suspended or debarred.
14. Contract Claims. All contract claims or controversies under this Agreement shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
15. Arbitration. In accordance with ARS § 12-1518, the parties may agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes.
16. License and Permits. Parties shall maintain in current status all Federal, State and Local licenses and permits applicable to them and required for their operation under this Agreement.
17. Offshore Performance of Work. Unless otherwise provided in a Transaction Document, and due to security and identity protection concerns, direct services provided under a Transaction Document against this contract shall be performed within the borders of the United States and its territories. Any services that are described in the Transaction document that directly serve the State of Arizona or its clients and may involve access to secure or sensitive or personal client data for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the Transaction Document, this requirement does not apply to indirect or "overhead" services, redundant backup services or technical services that are provided in the performance of the services contemplated under the Transaction Document. This provision applies to work performed by subcontractors at all tiers.
18. Insurance Requirements. Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives and employees. IBM subcontractors used in the performance of this contract

shall maintain coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits will be sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees, and Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".

Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

Supplier agrees to a waiver of subrogation under the following insurance policies:

- a. Commercial General Liability
- b. Automobile Liability
- c. Workers Compensation

provided, however, the waiver of subrogation for Workers Compensation does not apply in instances of gross negligence on the part of the customer, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$ 500,000

Disease – Each Employee \$ 500,000
Disease – Policy Limit \$1,000,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Professional Errors and Omissions Insurance

Each Claim \$1,000,000
Annual Aggregate \$1,000,000

IBM will carry Professional Errors and Omissions insurance, covering actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission committed solely in the conduct of supplier's professional services for customer in a minimum amount of \$1Million per claim.

a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed. IBM will continue its insurance coverages for the term of this contract 2 years as long as such coverage remains commercially available and reasonable viable in the market place.

b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. This is applicable to General Liability and Automobile Liability only.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources. This section is applicable to General Liability and Automobile only and is primary and non contributory only with respect to liability arising out this contract
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract. The provisions of this insurance section are subject to the other rights and obligations of the parties in this Agreement.

C. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to (State of Arizona Department Representative's Name & Address) and shall be sent by certified mail, return receipt requested. As IBM's global insurance programs have as a minimum a 90 days prior notice of cancellation provision there would never be a time when IBM would have a policy cancelled as all programs can be replaced in less than 90 days. Therefore if a policy is replaced a new certificate of

insurance will be sent to the customer via the IBM contract portal prior to any current policy being cancelled.

- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to (State of Arizona Department Representative's Name and Address). The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** IBM subcontractors used in the performance of this contract shall maintain coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

The remainder of this page is left intentionally blank.

Exhibit B - International Passport Advantage Agreement

Under this Agreement, State may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in Attachments, Service Descriptions, Terms of Use and Transaction Documents, collectively TDs. This Agreement and applicable TDs are the complete agreement regarding transactions by which State acquires EPs. State Originating Company (also identified as the Originating Site in the Passport Advantage Enrollment Form) and the IBM Originating Company that accepts the State Originating Company's orders agree to coordinate the administration of this Agreement within their respective Enterprises. Each Originating Company, Enterprise company, Agency, Mandatory and Permissive user accepts the terms of this Agreement as amended when licensing software under the Agreement and by following the Quote and PO ordering processes of referencing this Agreement # ADSPO15- 097466 on the Quote and Purchase Order and using the ordering entity's existing Passport Advantage Account or by submitting a new International Passport Advantage Enrollment Form if entity is not already enrolled in Passport Advantage.

1. General

1.1 Acceptance of Terms

The State Originating Agency and thereafter each of its participating Enterprise companies accept this Agreement by submitting an IBM International Passport Advantage Enrollment Form to IBM. This Agreement is effective on the date IBM accepts the initial order under this Agreement (the Effective Date) and remains in effect until the State Originating Company or the IBM Originating Company terminates it under this Agreement.

An EP is subject to this Agreement when IBM accepts State's order by i) sending an invoice or a Proof of Entitlement (PoE) including the level of authorized use, ii) making the Program or IBM SaaS available, iii) shipping the Appliance, or iv) providing the support, service, or solution.

1.2 Reserved.

1.3 Ordering, Payment and Taxes

IPAA software Quotes may be initiated by authorized users working with the IBM Software Sales focal point referenced in the ordering instructions documentation. Purchase Orders and Quotes must both reference this IBM Agreement number. PO's issued to IBM must reference this IBM Agreement # and the Quote # and must match the quantities referenced in the quote. Upon acceptance of a PO, Customer is promptly issued Proof of Entitlement which permits the download and use of the licensed software up to the quantities licensed.

(1) you agree to pay applicable charges as IBM specifies in its invoice, including an applicable late payment fee which IBM may levy. For Customer and users of this Agreement late payment fees shall not exceed rates specified in applicable Arizona statute.

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days.

1% Administrative Fee"

In accordance with ARS § 41-2633 the Department of Administration, State Procurement Office is including an Administrative Fee in this Statewide multiple agency, multiple government, cooperative contract. The Administrative Fee is used by the State to defray the additional costs associated with soliciting, awarding and administering State-wide contracts.

The Administrative Fee is a part of the contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item.

The Statewide Contracts Administrative Fee shall be one percent (1.0%) of quarterly sales receipts transacted under this Agreement by Permissive Users members of the State Purchasing Cooperative, minus any taxes or regulatory fees, minus any returns or credits, and minus any shipping charges not already included in the unit prices. The Administrative Fee percentage is only applicable to amounts actually received by the contractor during the quarter and is not applicable to amounts ordered by customers but not yet paid for.

The contractor shall provide sales amounts along with all assessed Administrative Fee amounts, within their Usage Report, including total amounts for the following.

Total sales receipts from State agencies, boards and commissions

Total sales receipts from members of the State Purchasing Cooperative

Total Administrative Fee amount based on one percent (1.0%) of the sales receipts collected the previous quarter from Permissive Users and members of the State Purchasing Cooperative

Within thirty (30) days following the end of the quarter, the contractor will submit a Usage Report and if applicable, a check in the amount of one percent (1%) of sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office.

Usage Report and Administrative Fee Submission schedule is as follows.

Fiscal Quarter 1 (Jul 1 - Sept 30).....Due by Oct 30

Fiscal Quarter 2 (Oct 1 - Dec 31).....Due by Jan 31

Fiscal Quarter 3 (Jan 1 - Mar 31).....Due by Apr 30

Fiscal Quarter 4 (Apr 1 - Jun 30).....Due by Jul 31

Usage Reports and Administrative Fees may be submitted in hardcopy or electronically, and any questions associated with either, may be directed to the following.

Department of Administration

State Procurement Office

ATTN: "Statewide Contracts Administrative Fee"

100 N. 15th Avenue

Suite 202

Phoenix, AZ 85007

report@azdoa.gov

Checks may be made out to the "State Procurement Office"

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

Payment of Taxes.

The Contractor shall be responsible for paying all applicable taxes. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

Tax Indemnification.

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

1.4 Reserved.

1.5 Liability and Indemnity

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

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

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

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

1.6 General Principles

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

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

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

State is responsible to pay communications charges associated with accessing SaaS, Appliance Services, IBM Software Subscription and Support, and Select Support unless IBM specifies otherwise in writing.

IBM and its subcontractors may process the business contact information of State, its employees and contractors worldwide for our business relationship, and State has obtained the necessary consents. IBM will comply with requests to access, update, or delete such contact information. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

The Parties shall not assign any right nor delegate any duty under this Agreement without the prior written approval of the other party. Such approvals shall not be unreasonably withheld. EPs are for use within State's Enterprise only, and may not be assigned, resold, rented, leased, or transferred to third parties other than Users of this IPAA. Any attempt to do so is void. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the product or service is not restricted. IBM will provide the State thirty (30) days written notice of IBM's right to the assignment to receive payments. Users of this IPAA may assign licenses between and amongst themselves as permitted in the IPLA.

All notices under this Agreement must be in writing and sent to the address below, unless a party designates in writing a different address. The parties consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of this Agreement made by reliable means is considered an original. This Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than eighteen (18) months after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

1.7 Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that

prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. State is responsible for its use of IBM and Non-IBM Products.

Both parties agree to the application of the laws of the State of Arizona and the Arizona Procurement Code in accordance with ARS § 41-2501, et seq, and AAC R2-7-101, et seq to this IPAA, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If any provision is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in this Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Agreement.

1.8 Agreement Termination

After expiration or termination of its obligations under this Agreement, the State Originating Company may terminate this Agreement without cause on one month's notice to the IBM Originating Company, and the IBM Originating Company may terminate this Agreement on three months' notice to the Customer Originating Company.

If State acquired or renewed IBM Software Subscription and Support, Selected Support, IBM SaaS, or if State acquired or renewed a Program's license prior to the notice of termination, IBM may either continue to provide such services or allow State to use the Program for the remainder of the current term(s), or give State a prorated refund.

The State Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies 1) have placed orders for EPs for 24 consecutive months, 2) have no Software Subscription and Support or Selected Support in effect, or 3) have any outstanding quotes for EPs.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one not complying is given written notice and reasonable time to comply.

State agrees to promptly discontinue use of and destroy all of State's copies of a Program upon termination of a license grant.

Any terms that by their nature extend beyond termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.9 Eligible Products

IBM determines EPs, and assigns each EP a point value. IBM can add or withdraw EPs (including in CEO Product Categories), change Passport Advantage point values, or add or withdraw a license metric for an EP at any time. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.

For an EP, IBM may withdraw a Fixed Term license, IBM Software Subscription and Support, and Select Support, Monthly Licensing (ML) in its entirety, or a SaaS or an Appliance Service in its entirety (collectively Options) on 12 months' written notice to all then current States by published announcement, letter, or e-mail.

If IBM withdraws an Option, State understands that as of the effective date of such withdrawal, State may not increase its level of use beyond the authorizations already acquired without IBM's written consent, renew or purchase that Option; and if State renewed the Option prior to the notice of withdrawal, State may either (a) continue to use/receive that Option until the end of the then current term or (b) obtain a prorated refund.

1.10 Renewal

The term for a Fixed Term License, Token License, IBM Software Subscription and Support, Selected Support or Appliance Services renews at then current charges. A reminder notice will be sent by IBM a minimum of thirty (30) days in advance of the expiration date.

IBM may pro-rate charges for IBM Software Subscription and Support, Selected Support, Fixed Term Licenses of six months or more, and Appliance Services to align with State's Passport Advantage Anniversary. If Subscription and Support for a particular program is withdrawn you will either be maintained for the remainder of the existing term or receive a prorated refund. Third Party software may be contained within an IBM Product or Program. Independent third party software cannot be ordered through this Agreement.

To reinstate any expired Software Subscription and Support coverage, Selected Support, a Fixed Term License or Appliance Services, State may not renew and must acquire Software Subscription and Support

Reinstatement, Selected Support Reinstatement, Appliance Services Reinstatement or a new initial Fixed Term License.

For a Monthly License, State selects a renewal option at the time of order.

1.11 Relationship Suggested Volume Price (RSVP) Level Pricing and Discounts

Quotes generated will reflect the current Government and Education pricing as applicable. Nothing in this Agreement prevents parties from working together on special bid pricing, for discounts greater than the Government and Education levels in place, which could be made under this Agreement.

RSVP/SVP Level Table:

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

1.12 Compliance Verification

State will i) maintain, and provide upon reasonable request, records and system tools output, and access to State's premises, as reasonably necessary for IBM and its independent auditor to verify State's compliance with this Agreement, including Machine Code and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order any required entitlements and pay additional charges at IBM's then current rates, (including uses in excess of State's authorizations or entitlements, and associated IBM Subscription and Support and Selected Support), and other liabilities determined as a result of such verification. These compliance verification obligations remain in effect during the term of this Agreement and for two years thereafter. State is responsible for retaining adequate records. If State's records are inadequate to determine IBM Subscription and Support or Selected Support charges, IBM's charges for any excess usage will include two years of associated maintenance and IBM Subscription and Support or Selected Support.

1.13 Programs in a Virtualization Environment (Sub-Capacity Licensing Terms)

EPs that meet the operating system, processor technology, and virtualization environment requirements for sub-capacity usage may be licensed based on processor value units (PVUs) under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product) <http://www-01.ibm.com/software/passportadvantage/subcaplicensing.html>. Product deployments that cannot meet Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

PVU based licenses for Eligible Sub-Capacity Products must be acquired for the total number of PVUs associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at <https://www-112.ibm.com/software/howtobuy/passportadvantage/valueunitcalculator/vucalc.wss>.

Prior to an increase in an Eligible Sub-Capacity Product's virtualization capacity, State must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.

1.14 State's Reporting Responsibilities

For Sub-Capacity usage of EPs, State agrees to install and configure the most current version of IBM's license metric tool (ILMT) within 90 days of State's first Sub-Capacity based Eligible Sub-Capacity Product deployment, to promptly install any updates to ILMT that are made available, and to collect deployment data for each such EP. Exceptions to this requirement are i) when ILMT does not yet provide support for the Eligible Sub-Capacity Product, ii) if State's Enterprise has fewer than 1,000 employees and contractors, State is not a Service Provider (an entity that provides information technology services for end user customers, either directly or through a reseller), and State has not contracted with a Service Provider to manage State's environment in which EPs are deployed, iii) if the total physical capacity of State's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity terms is less than 1,000 PVUs, or iv) when State's servers are licensed to full capacity.

For all instances where ILMT is not used, and for all non PVU based licenses, State is required to manually manage and track State's licenses as described in the Compliance Verification section above.

For all PVU based EP licenses, reports must contain the information in the example Audit Report available at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. Reports must be prepared at least once per quarter. Failure to generate Reports or provide Reports to IBM will cause charging under full capacity for the total number of physical processor cores activated and available for use on the server.

State will assign a person in State's organization with authority to manage and promptly resolve questions on Audit Reports or inconsistencies between report contents, license entitlement, or ILMT configuration; and promptly place an order with IBM or State's IBM reseller if reports reflect EP use over State's authorized level. IBM Software Subscription and Support and Selected Support coverage will be charged as of the date State exceeded State's authorized level.

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

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

IBM warrants it provides IBM Software Subscription and Support, Selected Support and Appliance Services using reasonable care and skill.

IBM warrants that a Machine Component of an Appliance used in its specified operating environment conforms to its official published specifications. The warranty period for an IBM Machine Component of an Appliance is a fixed period commencing on its date of installation (also called "Warranty Start Date") specified in a TD. If a 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, State may return it to IBM for a refund. The warranty for IBM SaaS is stated in its TD.

IBM does not warrant uninterrupted or error-free operation of an EP or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an EP. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under this Agreement as is, without warranties of any kind. Third parties may provide their own warranties to State.

IBM will identify IBM EPs it does not warrant.

Unless otherwise specified in an Attachment or TD, IBM provides non-IBM EPs, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. Third parties provide and license products and services directly to State under their own agreements.

3. Programs and IBM Software Subscription and Support

IBM Programs acquired under this Agreement are subject to IBM's International Program License Agreement IPLA, including its LI.

A Program may include 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.

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

3.1 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time State licenses the IBM Program under this Agreement or any other valid agreement. If an IBM Program license is for a Fixed Term subject to renewal or for an initial Commitment Term, State may obtain a refund only if State returns the Program and its PoE within the first 30 days of this initial term. The IPLA's "money-back guarantee" does not apply to Appliances.

3.2 Conflict between this agreement and the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and TDs, 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>.

3.3 IBM Trade-ups and Competitive Trade-ups

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

3.4 Monthly Licenses

Monthly License Programs (ML Programs) are IBM Programs provided to State for a monthly license charge. Monthly Licenses have a term that begins on the date that State's order is accepted by IBM and continues for a period State commits to pay IBM (a Commitment Term) as specified in the TD.

3.5 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that State's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the Anniversary date. A Fixed Term License is for the definite time specified by IBM in a TD.

3.6 Token Licenses

EPs which are Eligible Token Products or ETPs are assigned a Token Value. As long as the total Tokens required for all ETPs used concurrently does not exceed the number of Tokens authorized in State's PoE(s), State may use Token(s) for a single ETP or for a combination of ETPs.

Prior to exceeding current Token authorizations or using an Eligible Token Product not authorized, State must acquire sufficient additional Tokens and authorizations.

ETPs may contain a disabling device that will prevent them from being used after the end of the Fixed Term. State agrees not to tamper with this disabling device and take precautions to avoid any loss of data.

3.7 CEO Product Categories

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

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

3.8 IBM Software Subscription and Support

IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA.

IBM Software Subscription and Support begins on the date of IBM Program 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 acquisition.

IBM Software Subscription and Support includes defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available.

IBM provides State assistance for State's i) routine, short duration installation and usage (how-to) questions; ii) code-related questions (together "Support"). Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support>. Support for a particular version or release of an IBM Program is available only until IBM withdraws Support for that IBM Program's version or release. When Support is withdrawn, State must upgrade to a supported version or release of the IBM Program to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/>.

If State elects to continue IBM Software Subscription and Support for an IBM Program at a designated State Site, State must maintain IBM Software Subscription and Support for all uses and installations of the IBM Program at that Site.

If End User requests to renew expiring IBM Software Subscription and Support at a lesser quantity of IBM Program uses and installations than the expiring quantity, End User must provide a report that verifies current IBM Program usage and installation, and may be required to provide other compliance verification information. State shall not use IBM Software Subscription and Support benefits for IBM Programs for which State has not fully paid for IBM Software Subscription and Support. If State does, State must acquire IBM Software Subscription and Support reinstatement sufficient to cover all such unauthorized use at then current IBM prices.

If the fixed term license for a particular program is withdrawn you will either be allowed to continue the license for the remainder of the existing term or receive a prorated refund. Third Party software may be contained within an IBM Product or Program. Independent third party software cannot be ordered through this Agreement.

3.9 Selected Support

Selected Support may be available for (i) Non-IBM Programs or for (ii) Programs licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").

The IBM Software Subscription and Support section above applies to Selected Programs under Selected Support except that 1) IBM may provide State with assistance in designing and developing applications based on State's subscription level; 2) the IBM "Software Support Lifecycle" policy does not apply; and 3) no new versions, releases or updates are provided by IBM.

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

4. Appliances

An Appliance is an EP which is any combination of Program Components, Machine Components (MCs) and any applicable Machine Code Components offered together as a single offering and designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program Component of an Appliance. State shall not use an Appliance component independently of the Appliance of which it is a part

Each Appliance is manufactured from parts that may be new or used, and in some cases, an Appliance or its replacement parts may have been previously installed. Regardless, IBM's warranty terms apply.

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

When State acquires an Appliance directly from IBM, IBM transfers title to a MC to State or, if applicable, State's lessor, upon payment of all the amounts due except in the United States where title transfers upon shipment. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the MC until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM's property.

If IBM is responsible for installation, State will allow installation within 30 calendar days of shipment or additional charges may apply. State will promptly install or allow IBM to install mandatory engineering changes. State installs a State-set-up Appliance according to instructions provided with it.

A Machine Code Component is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the MC's processors, storage or other functionality as stated in its Specifications. State acceptance of this Agreement includes acceptance of IBM's Machine Code license agreements provided with the Appliance. A Machine Code Component is licensed only for use to enable a Machine Component to function under its Specifications and only for the capacity and capability for which State has acquired IBM's written authorization. The Machine Code Component is copyrighted and licensed (not sold).

4.1 IBM Appliance Services

IBM provides Appliance Services for Appliances consisting of Machine maintenance and IBM Software and Support as a single offering as further described in the Appliance Support Handbook at <http://www.ibm.com/software/appliance/support> .

One year of Appliance Services, starting on the Warranty Start Date specified in a TD, is included with the purchase of an Appliance. . All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that State was entitled to during that first year. Parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM within thirty days. A replacement assumes the warranty or maintenance status of the replaced part. When State returns an Appliance to IBM, State will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible.

5. IBM SaaS

IBM Software as a Service (IBM SaaS) is an EP offering IBM provides to State 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 State to download enabling software to use it.

State acknowledges that International Business Machines Corporation and its subsidiaries do not control the transfer of data over telecommunications facilities, including the Internet. IBM will only provide access and use of State's proprietary content to IBM employees and contractors as needed to deliver IBM SaaS. IBM will not disclose State's proprietary content and will return or destroy it upon the expiration or cancellation of IBM SaaS. IBM will provide State notice of any unauthorized third party access to State's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities.

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

The terms of a specific IBM SaaS offering are provided in its TD and may include without limitation, definitions, description of subscription and services, charge metrics, renewal and restrictions. TDs can be viewed at <http://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/> .

An IBM SaaS Subscription Period begins on the date that IBM notifies State that State has access and ends the last day of the month specified in the TD.

During an IBM SaaS Subscription Period, State may increase State's subscribed level of an IBM SaaS, but may only decrease the subscribed level at the end of a Subscription Period when renewing.

During an IBM SaaS Subscription Period IBM provides assistance, as specified in the TD, for State's offering-specific, task-oriented questions regarding IBM SaaS. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, State operating systems, Internet browsers, and software. IBM technical support for SaaS is available during the normal business hours (published prime shift hours) of the IBM SaaS support center.

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Exhibit C - IBM State Agreement for ICA Programs

This Agreement governs transactions by which State (also called Customer) licenses ICA Programs and acquires ICA Program Services from International Business Machines Corporation (IBM).

1. General Terms

1.1 Agreement Structure:

Part 1 – General Terms: Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, Geographic Scope and Governing Law.

Part 2 – Warranties: Warranties for ICA Programs and ICA Program Services, and Extent of Warranty.

Part 3 – License for ICA Programs: License, Distributed System License Option, ICA Program Services, and License Termination.

1.2 Attachments and Transaction Documents

Additional terms for ICA Programs and ICA Program Services are in documents called Attachments and Transaction Documents provided by IBM. In general, Attachments contain terms that may apply to more than one ICA Program or ICA Program Service transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain details and terms related to each individual transaction. State 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.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.3 Definitions

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Date of Installation –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if State defers installation, makes it available to State for subsequent installation by IBM;
- b. for a State-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes State to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date State uses the chargeable component or a copy. State agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine – a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>

Enterprise – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term Enterprise applies only to the portion of the Enterprise located in the United States.

IBM Machine – a Machine bearing an IBM logo.

ICA Program – an IBM Program licensed under Part 3 of this Agreement.

Licensed Internal Code (LIC) – another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine – a hardware device, including its resources, capabilities, features, conversions, Machine upgrades, elements, or accessories, or any combination of them. The term Machine includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code – all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code. State's use of Machine Code is governed by the terms of the applicable IBM License Agreement for Machine Code provided at http://www.ibm.com/systems/support/machine_warranties/machine_code.html.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term Program includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term Program does not include Machine Code.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to State.

Specifications – information specific to an ICA Program. IBM Machine Specifications are in a document entitled Official Published Specifications. ICA Program Specifications are in a document entitled Licensed Program Specifications.

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; and (ii) monitoring and reporting use of the Machine Code, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

1.4 Acceptance of Terms

State accepts the terms in Attachments and Transaction Documents by i) signing the Attachments or Transaction Documents (by hand or electronically), ii) using the ICA Program or ICA Program Service, or allowing others to do so, or iii) making any payment for the ICA Program or ICA Program Service. An ICA Program or ICA Program Service becomes subject to this Agreement when IBM accepts State's order by i) sending State a Transaction Document, ii) making the ICA Program available to State, or iii) providing the ICA Program Service. An Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, are specified in a Transaction Document. For ICA Programs IBM provides to State in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such ICA Programs to the IBM-designated carrier, unless otherwise agreed to in writing by State and IBM.

1.6 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for ICA Programs or ICA Program Services, based on recurring charges. IBM will inform State in advance whenever additional charges apply.

Recurring charges for an ICA Program begin on its Date of Installation. Charges for ICA Program Services are billed as specified in a Transaction Document. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) ICA Program Services for which State prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for usage charges, the estimate is for planning purposes only. IBM invoices charges based on State's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

Recurring charges may be based on measurements of actual or authorized use. State agrees to provide actual usage data as described in an Attachment or Transaction Document. If State makes changes to its environment that impact usage charges, State agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. State receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for ICA Programs and ICA Program Services, as well as labor rates and minimums for ICA Program Services provided under this Agreement, by giving State at least three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

1.6.4 Payment

Amounts are payable within 30 days or as specified in a Transaction Document. State agrees to pay accordingly. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then State agrees to pay that amount as specified in an invoice, unless State supplies exemption documentation. For ICA Programs that IBM delivers electronically to State and for which State claims a state sales and use tax exemption, State and IBM agree that no tangible personal property (e.g., media and publications) is transferred to State.

1.7 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing State at least 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, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, State may request that IBM defer the change effective date until the end of the current contract period. State acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for ICA Programs or ICA Program Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above. Otherwise, for a change to be valid, both parties must sign it.

1.8 Intellectual Property Protection

1.8.1 Third Party Claims

If a third party asserts a claim against State that an ICA Program that IBM provides to State under this Agreement infringes that party's patent or copyright, IBM will defend State against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against State or that are included in a settlement approved in advance by IBM, provided that State:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the ICA Program's applicable license terms and State's obligations under section 1.8.2 (Remedies) below.

1.8.2 Remedies

- a. If such a claim is made or appears likely to be made, State agrees to permit IBM, in IBM's discretion, either to i) enable State to continue to use the ICA Program, 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, then on IBM's written request, State agrees to promptly return the ICA Program to IBM and discontinue its use. IBM will then give State a credit equal to 12 months' charges for the ICA Program.

1.8.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by State or a third party on State's behalf that is incorporated into an ICA Program or IBM's compliance with any designs, specifications, or instructions provided by State or a third party on State's behalf;
- b. an ICA Program's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of an ICA Program, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of an ICA Program made by State or by a third party on State's behalf or the combination, operation, or use of an ICA Program with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of an ICA Program outside State's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

1.9 Limitation of Liability

The limitations and exclusions in this Section 1.9 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.9.1 Items for Which IBM May Be Liable

Regardless of the basis on which State 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 ICA Program or ICA Program Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the charges (if recurring, 12 months' charges apply) for the ICA Program or ICA Program Service that is the subject of the claim.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

The following amounts, if IBM is legally liable for them, are not subject to a cap on the amount of damages:

- a. third party payments referred to in the Intellectual Property Protection section above;
- b. damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c. damages that cannot be limited under applicable law.

1.9.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or ICA Program developers 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.

1.10 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to State's business and may be conducted on State's premises, during State's normal business hours. State agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify State's usage data and other information affecting the calculation of charges also includes the right to verify State's compliance with all other terms of this Agreement (including applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

State agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that State's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify State in writing if any such verification indicates that State is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to State and for two years thereafter.

State will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so.

1.11 General Principles of Our Relationship

1.11.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address specified in an applicable Attachment or Transaction Document. 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.

1.11.2 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 State'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 States.

State agrees not to resell any ICA Program Service without IBM's prior written consent. Any attempt to do so is void.

1.11.3 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 State's business, including those relating to ICA Programs and ICA Program Services that State acquires under this Agreement, or that IBM's provision of, or State's receipt of, particular ICA Programs or ICA Program Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of ICA Programs, technology, ICA Program Services or data, directly or indirectly, to certain countries, or for certain end uses or end users.

1.11.4 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. If such disputes, disagreements or claims between the parties cannot be resolved at the executive level, the parties may agree to address the issue by way of a non binding arbitration panel. 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.

1.11.5 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 ICA Program or ICA Program Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. IBM is an independent contractor, not a State's agent, joint venturer, partner, or fiduciary. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to State under this Agreement may be terminated if State fails to fulfill its applicable payment obligations.
- e. State agrees that IBM may process the business contact information of State's employees and contractors and information about State as a legal entity (contact information) in connection with ICA Programs and ICA Program Services or in furtherance of IBM's business relationship with State. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, business partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, State has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. 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 State except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. State is responsible for selecting the ICA Programs and ICA Program Services that meet its needs and for the results obtained from the use of the ICA Programs and ICA Program Services, including State's decision to implement any recommendation concerning State's business practices and operations.
- 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. As reasonably required by IBM to fulfill its obligations under this Agreement, State agrees to provide IBM with sufficient and safe access (including remote access) to State'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 State's delay in providing such access or performing other State responsibilities under this Agreement.

1.12 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. License termination is described in Part 3.

1.13 Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.14 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of Arizona to govern, interpret, and enforce all of State's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. Warranties

2.1 The IBM Warranties

2.1.1 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications. During the warranty period, IBM provides defect-related ICA Program Services without charge. ICA Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its ICA Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after State obtains its license and IBM is unable to make it do so, State may return the ICA Program and the charges State paid for the license will be refunded. To be eligible, State must have obtained its license while ICA Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding ICA Program Services are contained in Part 3.

2.1.2 Warranty for ICA Program Services

IBM warrants that it performs each ICA Program Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. State agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

2.2 Extent of Warranty

The warranties stated above will not apply to the extent that there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by State or a third party, or failure or damage caused by a product for which IBM is not responsible.

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

2.2.1 Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an ICA Program or ICA Program Service or that IBM will correct all defects. IBM will identify ICA Programs that it does not warrant. IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Products (including those provided with, or installed on, an IBM Machine at State's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to State. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3. License for ICA Programs

3.1 License

When IBM accepts State's order, IBM grants State a nonexclusive license to use the ICA Program only within State's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

3.1.1 Authorized Use

Under each license, IBM authorizes State to:

- a. run or execute the ICA Program only on the Designated Machine specified by the State to IBM under the terms of Section 3.1.2 below;
- b. use the ICA Program to the extent of authorizations State has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that State reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

3.1.2 State's Additional Obligations

For each ICA Program, State agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for State's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

3.1.3 Actions State May Not Take

For each ICA Program, State agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;

- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside State's Enterprise.

3.2 Distributed System License Option

For some ICA Programs, State may make a copy under a Distributed System License Option (DSLO copy). IBM charges less for a DSLO copy than for the original license (the Basic license). In return for the lesser charge, State agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive ICA Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

3.3 ICA Program Services

ICA Program Services are defect correction information, restrictions, or bypasses that IBM provides for the unmodified portion of the current release of a warranted ICA Program for at least one year following its general availability. If IBM can reproduce State's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides ICA Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides ICA Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

3.4 License Termination

State may terminate the license for an ICA Program at any time on at least one month's written notice to IBM.

IBM may terminate State's license for an ICA Program if State fails to comply with:

- a. the terms of this Section 3,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.10 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that State acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When State obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, State's authorization to use the ICA Program is also terminated. State agrees to promptly destroy all copies of the ICA Program after either party has terminated the license.

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Exhibit D - International Agreement for Acquisition of Software Maintenance

Part 1- General Terms

This IBM International Agreement for Acquisition of Software Maintenance (called the "Agreement") governs State's acquisition of IBM software maintenance ("Software Maintenance"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Maintenance is provided only for those Eligible Programs licensed by State within its Enterprise. Acquisition of Software Maintenance in quantities greater than the number for which State is licensed does not create or imply any greater license authorization. An "Enterprise" in this Agreement is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. "Eligible Programs" are described below.

Section 2 of the Agreement contains terms that are specific to a particular hardware platform. The terms in the remaining sections are in addition to those in section 2, and apply to all platforms.

1. Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the International Program License Agreement ("IPLA") unless otherwise specified by IBM. A copy of the IPLA is provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD. Sections of the IPLA entitled "Licensee Data and Databases," "Limitation of Liability," "Compliance Verification," "General," and "Geographic Scope and Governing Law," including any associated Country-unique Terms applicable to those sections are also part of this Agreement, subject to the following:

- a. If the IPLA version provided with the IBM Eligible Program is not version 13 or higher (the version number is indicated by the last two digits in the form number—for example, the "13" in Z125-3301-13), then version 13 applies. State may obtain a copy of version 13 from IBM or its resellers and on the Internet at www.ibm.com/software/sla; and
- b. the following changes:
 - (1) The terms "Program" and "Program license(s)" are replaced by the term "Software Maintenance."
 - (2) The term "Licensee" is replaced by the term "State."
 - (3) The phrase "the laws of the country in which State acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which Software Maintenance is acquired."
 - (4) The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which State acquired the Program license" in the Jurisdiction subsection is replaced by the statement, "All rights, duties, and obligations of each of the parties are valid only in the country in which Software Maintenance is acquired or, if IBM agrees, the country where Software Maintenance is used."

Capitalized terms used but not defined in this Agreement have the meaning given to them in the IPLA.

2. Software Maintenance

- a. For Eligible Programs running on an IBM System z platform or equivalent:
 - (1) **Eligible Programs:** Programs for which S&S is available are listed at www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo. Click on IPLA Subscription and Support Addenda.
 - (2) **S&S Period:** One year. When State orders S&S with a Program, the initial S&S Period begins on the date that IBM makes the Program available to State.
 - (3) **Early Termination of an S&S Period for a Program:** While State may terminate an S&S Period, IBM does not issue a credit or refund for the unused portion of an S&S Period, unless the S&S Period was renewed under the provisions of subsection 4, Automatic Renewal (below). In such event, State may obtain a credit, prorated to the end of that S&S Period from the first day of the month following the later of (a) IBM's receipt of State's termination request or (2) State's requested date of termination, through the end of that S&S Period.

- (4) **Automatic Renewal:** If, by the last day of the current S&S Period, IBM has received no written notification from State, that State does not want to renew S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. However, IBM will not invoice State until a renewal purchase order is received. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period. Should IBM not receive a renewal purchase order in a reasonable period of time after sufficient notice to the State, IBM will then terminate S&S.
- (5) **S&S Period Adjustment:** When State acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, State may request that the S&S Period duration is adjusted to end at a month of State's choice. If State does not choose a date, IBM will inform State of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section 3. **Charges and Payment** below) will be pro-rated accordingly.
- (6) **S&S:** During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:
 - (a) defect correction information, a restriction, or a bypass;
 - (b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and
 - (c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the State's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>

S&S does not include assistance for 1) the design and development of applications, 2) State's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

S&S is provided only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

- (7) **Resumption Fee:** A charge to resume S&S after State either (a) declined S&S at the time State acquired the license for a Program or (b) terminated S&S. This charge is equal to the total of all S&S Charges that State would have paid during the lapsed interval. An S&S Period in such an instance begins on the date that IBM accepts State's order.
 - (8) **S&S Upgrade:** If State upgrades S&S due to an increase in the level of use of an Eligible Program, any increase to the S&S Charge will be pro-rated to the end of the current S&S Period.
- b. For Eligible Programs running on IBM distributed platforms (e.g., IBM Power Systems, IBM System i, IBM System p, IBM System x, IBM System Storage, and IBM Retail Store Solutions) or equivalent:
- (1) **Eligible Programs:** Unless otherwise provided by IBM, Eligible Programs for which Software Maintenance is available are listed at www.ibm.com/servers/eserver/series/sftsol/subscript2.htm or may be obtained from State's IBM marketing representative.
 - (2) **Initial Software Maintenance Period:** State must choose either one year, the charge for which may be included with the Eligible Program, or, for an additional charge, three years of Software Maintenance at the time State orders an Eligible Program. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to State. If the Eligible Program is part of an IBM Software Maintenance for OS/400, i5/OS, and selected Programs, then the Initial Software Maintenance Period duration will be adjusted so that the expiration coincides with that of the other Eligible Programs in the group. In such event, the Initial Software Maintenance Period may be less than one year.
 - (3) **Subsequent Software Maintenance Periods (under this Agreement):** One or three years, at State's option.

- (4) **Early Termination of a Software Maintenance Period for a Program:** While State may terminate a Software Maintenance Period, IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.
- (5) **Renewal:**
- (a) It is State's responsibility to renew Software Maintenance at the end of each Software Maintenance Period. IBM will renew expiring Software Maintenance under terms and charges made available to State prior to expiration of the then current Software Maintenance Period, if it receives State's order to renew (e.g., order form, order letter, purchase order) not later than the expiration date. Subsequent Software Maintenance Periods under this Agreement (or other terms and charges made available to State prior to expiration of the then current Software Maintenance Period) begin on the day following the end of the preceding Software Maintenance Period. If State does not renew Software Maintenance by the expiration date of the Software Maintenance Period but subsequently wishes to acquire Software Maintenance, a Software Maintenance After License Fee, as set forth below, will apply.
 - (b) For Eligible Programs running on Power Systems, System i or System p platforms, if the State specifies in advance, IBM, even if it does not receive State's order to renew, will continue to provide Software Maintenance under terms and charges made available to State prior to expiration of the current Software Maintenance Period.
- (6) **Software Maintenance:** During the Software Maintenance Period:
- (a) IBM makes available to State the most current commercially available version, release, or update to all of the Eligible Programs for which State acquires Software Maintenance under this Agreement, should any be made available. For Power Systems, System i, and System p Programs under this Agreement, State may obtain upgrades to any more recent commercially available version, release or update. State's right to upgrade to a new version, release or update under this subsection may only be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed.
 - (b) For IBM Software Maintenance for OS/400, i5/OS, and selected Programs, State is entitled to upgrade an Eligible Program to a specific version or release only one time per machine, notwithstanding 2.b.(6)(a) above.
 - (c) IBM provides State technical assistance for State's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.
 - (d) IBM provides assistance via telephone and, if available, electronic access, to only State's information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the State's geography. This assistance is not available to State's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Additional details regarding assistance, including the definition of Severity 1, are provided in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>.
 - (e) Software Maintenance does not include assistance for 1) the design and development of applications, 2) State's use of Eligible Programs in other than their specified operating environment, or 3) failures caused by State owned products for which IBM is not responsible under this Agreement.
 - (f) And only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.
- (7) **Software Maintenance After License Fee** (which may be referred to as "Maintenance After License" or "MAL" in connection with System i platforms and as "After License Charge" or "ALC" in connection with System p platforms):
- (a) Software Maintenance After License Fee is the charge to resume Software Maintenance if State
 - (i) did not renew it before the end of the then current Software Maintenance Period; or
 - (ii) terminated it.

- (b) The Software Maintenance Period for a resumption of Software Maintenance begins on the date that IBM accepts State's order.
 - (c) The Software Maintenance After License Fee applies when State acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for OS/400, i5/OS, and selected Programs, unless
 - (i) the machine has the most current version and release of the appropriate operating system installed; and
 - (ii) State acquires Software Maintenance within 30 days of State's acquisition of the machine.
 - (d) The Software Maintenance After License Fee applies when State acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for the AIX operating system or AIX selected Programs unless
 - (i) the machine has a current version and release of the AIX operating system or AIX selected Programs installed and
 - (ii) State acquires Software Maintenance within 30 days of State's acquisition of the machine.
 - (e) For Software Maintenance for other Eligible Programs not otherwise covered by this subsection 2.b(7), a Software Maintenance After License Fee may apply to States acquiring used Power System, System i, or System p machines. Please contact your IBM representative or IBM Call Center, for further information.
- (8) Transfer of IBM Software Maintenance on Power Systems, System i and System p machines: In addition to the provisions of section 4. "Software Maintenance Transferability" below, Software Maintenance for Programs running on Power Systems, System i or System p platforms
- (a) applies to a designated machine (type, model and serial number);
 - (b) may be transferred only to another machine that is licensed for the same operating system at the same or a more recent release level; and
 - (c) may incur an increase in the Software Maintenance Charge if the "transferred to" machine is of a larger capacity.

3. Charges and Payment

If State returns an Eligible Program for refund as allowed under its license terms, IBM will terminate, and refund any charges paid for, Software Maintenance ordered with the Program. IBM does not give refunds for Software Maintenance without the return of the associated Eligible Program.

- a. Software Maintenance acquired directly from IBM
 - (1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.
 - (2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.
 - (3) IBM may increase the Software Maintenance Charge without notice. Increased prices will be effective at the end of the fiscal year in which the prices increased. The increased prices, less any applicable discount, will be applicable to any subsequent renewals on the anniversary date of the renewal. An increase will not apply to State if IBM receives State's order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of State's order IBM makes Software Maintenance available to State. State receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.
 - (4) Amounts are due and payable upon receipt of invoice. State agrees to pay accordingly, including any late payment fee permitted by State law.
 - (5) If any authority imposes a duty, tax, levy or excluding those based on IBM's net income, upon Software Maintenance IBM supplies under this Agreement, then State agrees to pay that amount as specified in the invoice, unless State supplies exemption documentation.

4. **Software Maintenance Transferability**

State may transfer Software Maintenance only to an entity that is within State's Enterprise and located within the country in which Software Maintenance is acquired, provided that the entity receiving the Eligible Program agrees to the terms of this Agreement.

5. **State's Responsibilities**

State agrees that when State acquires Software Maintenance for an Eligible Program:

- a. State will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;
- b. State is responsible for the results obtained from the use of the Software Maintenance
- c. State will, at IBM's request, allow IBM to remotely access State's system to assist State in isolating the software problem cause;
- d. State remains responsible for adequately protecting State's system and all data contained in it whenever IBM remotely accesses it with State's permission to assist State in isolating the software problem cause;
- e. State will provide, upon reasonable notice from IBM, sufficient, free, and safe access to State's facilities for IBM to fulfill its obligations; and
- f. except as permitted by section 4. Software Maintenance Transferability above, State will not assign, or otherwise transfer, this Agreement or State's rights under this Agreement, or delegate State's obligations, without IBM's prior written consent. Any attempt to do so is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us 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 under this Agreement without obtaining your 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 States. IBM will provide reasonable written notice of such change to the point of contact on file with IBM.

6. **Warranty for Software Maintenance**

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>. State agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

These warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION, THESE WARRANTIES ARE STATE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

7. **Changes to Agreement Terms**

IBM may change the terms of this Agreement by giving State three months' prior written notice by letter or e-mail directly to State. These changes are not retroactive and apply, as of the effective date IBM specifies in the notice, only to new orders and renewals. During such three month period, you shall have the opportunity to object to such proposed changes. If you do not so object, 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. If you do so object, such changes will not apply unless or until we reach an agreement regarding such changes

Otherwise, for a change to be valid, both of us must sign it.

8. Termination and Withdrawal

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and provided a thirty (30) day period to cure such non compliance. Notwithstanding the foregoing, the thirty (30) day opportunity to cure does not apply to the Compliance Verification requirement provided in this Agreement.

IBM may withdraw Software Maintenance for an Eligible Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which State has prepaid and IBM has not yet fully provided it to State, at its sole discretion IBM will either continue to provide Software Maintenance to State until the end of the current Software Maintenance Period or give State a prorated refund. Acquisition of Software Maintenance does not extend the period for which an Eligible Program is supported.

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Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

9. Additional Terms

- a. To assist State in isolating the cause of a software problem, IBM may ask State to (1) allow IBM to remotely access State's system or (2) send State information or system data to IBM. IBM uses information about errors and problems only to improve its products and services and assist with its provision of Software Maintenance. IBM may use subcontractors and IBM Enterprise entities in other countries for these purposes, in accordance with Exhibit A, Paragraph 17, and State authorizes IBM to do so.

State remains responsible for (i) any data and the content of any database State makes available to IBM, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (iii) backup and recovery of the database and any stored data. State will not send or provide to IBM access to personal information. If State provides such access to or sends such personal information to IBM, IBM is relieved of any liability with respect to the access or disclosure of such personal information.

- b. All information exchanged is non confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
- c. Each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. 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.

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International Agreement for Acquisition of Software Maintenance

Part 2- Reserved

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Exhibit E - International Program License Agreement

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Part 2 - Reserved

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