The parties agree to modify Client Relationship Agreement number ________________ as follows:

The term Products also includes Cloud Services.

Add as a new section:

1. Cloud Services

a. A Cloud Service is an IBM branded offering provided by IBM and made available via a network. Each Cloud Service is described in an Attachment or TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

b. When IBM accepts Client’s order, IBM provides Client the entitlements specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client’s use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

d. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client’s account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Client may not: i) resell direct access to a Cloud Service to a third party outside Client’s Enterprise; or ii) combine Cloud Services with Client’s value add to create a commercially available Client branded solution for which Client charges a fee.

1.2 Content and Data Protection for Cloud Services

a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service. Use of the Cloud Service will not affect Client’s existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in a TD.

b. Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

c. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, or earlier upon Client’s request. IBM may charge for certain activities performed at Client’s request (such as delivering Content in a specific format). IBM does not archive Content; however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM’s backup retention practices.

d. Each Cloud Service is designed to protect Content as described in the Agreement. IBM’s Data Security and Privacy Principles for IBM Cloud Services (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client’s intended use and Content. By using the Cloud Service, Client acknowledges that it meets Client’s requirements and processing instructions.

e. Client acknowledges that i) IBM may modify the DSP from time to time at IBM’s sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to the DSP will materially degrade the security of a Cloud Service.

1.3 Changes to Cloud Services

IBM may modify a Cloud Service, without degrading its functionality or security features.
IBM may withdraw a Cloud Service on 12 months’ notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client’s unexpired term or work with Client to migrate to another IBM offering.

1.4 Suspension and Termination of Cloud Services

IBM may suspend, revoke or limit Client’s use of a Cloud Service if IBM determines there is a material breach of Client’s obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

Client may terminate a Cloud Service on one month’s notice: (i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; (ii) if IBM’s modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or (iii) if IBM notify Client of a modification that has a material adverse effect on Client’s use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client’s Content to an alternative technology for an additional charge and under separately agreed terms.

2. Warranties and Post Warranty Support

Add new paragraph:

a. IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

Charges, Taxes and Payment or Charges, Taxes, Payment and Verification

Add to end of paragraph a: Prepaid Cloud Services must be used within the applicable period.

3. Governing Laws and Geographic Scope

In paragraph b, add after first sentence: For Cloud Services, both parties agree to the application of the laws of the country of Client’s business address.

4. General

In paragraph b, replace third through fifth sentences with: Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice.

In paragraph f, add to end of first and at end of second sentences before the period: “, or Cloud Services”.

Z126-6560-US-04.01 10-2017