Client Relationship Agreement for Services

This Client Relationship Agreement (CRA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this CRA (together, the “Agreement”) under which Client may order IBM Services (also referred to as “IBM Products” herein) and third party services (also referred to as “Non-IBM Products” herein). Attachments typically contain additional terms that apply to similar types of offerings. TDs, such as service descriptions, order documents, statements of work or supplements, contain specific details related to an order for a Product and there may be more than one TD providing the details of an order. In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment.

1. Services
   a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A program is an example of an Existing Licensed Work and is subject to the program terms. IBM grants Client an irrevocable (subject to Client’s payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.
   b. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days’ notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

2. Warranties and Post Warranty Support
   a. IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.
   b. IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties of 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 Client.

3. Charges, Taxes, and Payment
   a. Client agrees to pay all applicable charges specified for an IBM Product or non-IBM Product, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client’s acquisitions under this Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable 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.
   b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
   c. IBM may change recurring charges, labor rates and minimum commitments on three months’ notice. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if: i) IBM receives the order before the announcement date of the increase; and ii) within three months after IBM’s receipt of the order, the Product is shipped or made available to Client.

4. Liability and Indemnity
   a. IBM’s entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months’ charges apply) for the Product that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. The limitations apply collectively to IBM, its affiliates, contractors, subprocessors, and suppliers.
   b. The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.
c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client 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.

d. IBM has no responsibility for claims based on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Content, or any Client materials, designs, or specifications.

5. Termination

   a. Either party may terminate this CRA: i) without cause on at least one month’s notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this CRA does not terminate TDs, and provisions of this CRA and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. Failure to pay is a material breach.

6. Governing Laws and Geographic Scope

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

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

7. General

   a. Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA. This paragraph does not apply to Content provided in the use of a Cloud Service.

   b. Client accepts an Attachment or TD by ordering, using, or making a payment for, the Product. Since this CRA may apply to many future orders, IBM may modify this CRA by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing orders 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. Except as provided above, all changes to the CRA must be in writing accepted by both parties. If there is a conflict, an Attachment or TD prevails over the terms of the Agreement.

   c. IBM is an independent contractor, not Client’s agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client’s regulatory obligations, or assume any responsibility for Client’s business or operations. Each party is responsible for determining the assignment of its personnel and all contractors and subprocessors and for their direction, control, and compensation.

   d. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest; market abuse; anti-bribery and corruption; and fraud. IBM and its personnel comply with such policies and require contractors and subprocessors to have similar policies.

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

   f. As used in this paragraph, “Content” includes any information or data Client may provide, make available or grant access to in connection with IBM providing other Services. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to IBM, and its contractors and subprocessors to use, provide, store and process Content while providing Services. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals’ information, including personal or other regulated information in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures. IBM’s Data Processing Addendum at www.ibm.com/terms applies and supplements the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to Content.
IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of Products.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments or assignment by IBM in conjunction with the sale of the portion of IBM’s business that includes the Product is not restricted.

This CRA applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of this CRA. The signatories shall coordinate the activities of Enterprise companies under this CRA. Enterprise companies include: (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and (ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation agreement.

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

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

Agreed to:

Client Company Name: ________________________________

By__________________________________________________

Authorized signature

Title: ____________________________________________

Name (type or print): _______________________________

Date: ______________

Client number: ________________________________

Enterprise number: ______________________________

Client address: __________________________________

________________________________________________________________________

Agreed to:

International Business Machines Corporation

By__________________________________________________

Authorized signature

Title: ____________________________________________

Name (type or print): ______________________________

Date: ______________

Agreement number: ______________________________

IBM address: __________________________________

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