

**Agreement No.**

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND CARAHSOFT TECHNOLOGY CORP**

This Agreement is entered into this 15 day of June 2023, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Carahsoft Technology Corp, hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of IBM Maximo - Software as a Service Licenses.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Exhibit C—IBM Maximo Application Suite as a Service – Service Description

Exhibit D—General Terms for Cloud Offerings TOU

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed **Seven hundred ninety-four thousand one hundred sixty-two dollars (\$794,162)**. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

#### 4. **Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from June 15, 2023, through June 14, 2028.

#### 5. **Termination**

This Agreement may be terminated by Contractor or by the **Director of Public Works** or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of twenty (20) calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

#### 6. **Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

#### 7. **Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. **Hold Harmless and Contractor's Limitation of Liability**

a. **General Hold Harmless**

i) Contractor agrees to indemnify and hold harmless the County, its officers, agents and employees against any and all claims for damages for which Contractor is liable that are caused by, arise out of, or result from this Agreement, Contractor's performance or failure to perform within the Agreement, or the negligent acts or omissions of Contractor or any of its direct employees, affiliates, contractors, or suppliers, by paying costs, damages and legal fees that a court finally awards or that are included in a settlement approved by Contractor, provided that County shall promptly notify Contractor in writing of any third party claim(s), and will reasonably cooperate with Contractor in the defense and any related settlement negotiations.

ii) If a third party asserts a claim against County that a Contractor product acquired under the Agreement infringes a patent or copyright, Contractor will defend County against that claim and pay amounts finally awarded by a court against County or included in a settlement approved by Contractor, provided that County promptly: i) notifies Contractor in writing of the claim; ii) supplies information requested by Contractor; and iii) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. County retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not be unreasonably withheld.

Contractor has no responsibility for patent or copyright infringement claims based on Non-Contractor products, items not provided by Contractor, or any violation of law or third party rights caused by Content, or any County materials, designs, specifications, or use of a non-current version or release of a Contractor product when an infringement claim could have been avoided by using a current version or release.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. **Contractor's Limitation of Liability**

i) Contractor's entire liability for all claims related to the contract will not exceed the amount of any actual direct damages incurred by County 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. Contractor will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to Contractor, its affiliates, contractors, and suppliers.

ii) The following amounts are not subject to the above cap: i) payments referred to in the subparagraph "a" (**General Hold Harmless**) above; and ii) damages that cannot be limited under applicable law.

**9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County’s prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

**10. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County’s Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor’s coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers’ Compensation and Employer’s Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

(a) Comprehensive General Liability.....\$1,000,000

(b) Motor Vehicle Liability Insurance.....\$1,000,000

(c) Professional Liability.....\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**12. Non-Discrimination and Other Requirements**

**a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability

(physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

**b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

#### **h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

#### **13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no

employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

**14. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the

State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Wilson Wong, IT Manager  
Address: 555 County Center, 5th Floor  
Redwood City, CA 94063  
Telephone: 650-599-1429  
Facsimile: 650-363-8220  
Email: [wwwong@smcgov.org](mailto:wwwong@smcgov.org)

In the case of Contractor, to:

Name/Title: Matthew Dietz/  
Address: 11493 Sunset Hills Road STE 100, Reston, VA 20190-5230  
Telephone: (571) 662-3234  
Facsimile:  
Email: [Matthew.Dietz@carahsoft.com](mailto:Matthew.Dietz@carahsoft.com)

**18. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

**For Contractor:** CARAHSOFT TECHNOLOGY CORP

<small>DocuSigned by:</small>  <small>F2854BC54CF2489...</small> Contractor Signature	<hr/> 6/7/2023   9:27 AM PDT <hr/> Date	<hr/> NATALIE LEMAY <hr/> Contractor Name (please print)
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COUNTY OF SAN MATEO

By:  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:  
Clerk of Said Board

## Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Purchase software licensing for hosted “software as a service” (SaaS), database migration services and application maintenance and technical support necessary to the continued usage and administration of Facilities and Utilities Divisions maintenance management.

Contractor shall provide the services as detailed in the attached IBM Maximo Application Suite as a Service – Service Description (**Exhibit C**), subject to General Terms for Cloud Offerings TOU (**Exhibit D**).

Contractor will provide access to dedicated cloud service platform for IBM Maximo Application Suite (MAS), which includes:

- One (1) production environment (The number of users in a production environment is limited by the quantities of subscriptions ordered).
- One (1) non-production environment (No more than 30 users can access the non-production Instance simultaneously).

MAS application usage, runtime, and user access are managed by using Application Points (AppPoints).

**Exhibit B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the contractor's proposal. Contractor shall be paid a not to exceed amount of seven hundred ninety-four thousand one hundred sixty-two dollars (\$794,162).

Invoices should be forwarded via **email** to:

[Dpw\\_accounting@smcgov.org](mailto:Dpw_accounting@smcgov.org)

Public Works – Accounting Department: c/o Wilson Wong

**Fee schedule and terms attached**

IBM will invoice the County annually for the Application Suite as a Service in accordance with the table below, plus applicable taxes, in connection with the Services. Amounts are due upon receipt of the invoice and payable within 30 days of an approved invoice by the County.

County Contact for IT:  
Wilson Wong, IT Manager  
650-599-1429

Contact information for the Department of Public Works:  
650-363-4100

3/13/2023	Part No	Description	Unit Price	Qty	Extended Price
	D0A51ZX	Application Suite as a Service - Yr 1	\$ 234.00	599	\$ 140,166.00
	D0A51ZX	Application Suite as a Service - Yr 2	\$ 241.02	599	\$ 144,370.98
5-year Quote #: 38150100	D0A51ZX	Application Suite as a Service - Yr 3	\$ 248.25	599	\$ 148,701.75
	D0A51ZX	Application Suite as a Service - Yr 4	\$ 255.70	599	\$ 153,164.30
	D0A51ZX	Application Suite as a Service - Yr 5	\$ 263.37	599	\$ 157,758.63
	D0D5BZX	Application Suite Migration Service Resource Unit Set Up	\$ 500.00	100	\$ 50,000.00
	<b>Total Price</b>				
					<b>\$ 794,161.66</b>

Notes: Billing Annual  
Committed Term: 60 Months  
Committed Term Price Change: Increase 3% every 12 months  
Renewal Type: Terminate at end of current term



## Service Description

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### IBM Maximo Application Suite as a Service for Other Public Clouds

This Service Description describes the Cloud Service. The applicable order documents provide pricing and additional details about Client's order. Upon acceptance of Client's order, this Service Description and the Cloud Services Agreement found at <http://www.ibm.com/terms/csa> (or an equivalent agreement for Cloud Services between the parties) applies to Client's use of the Cloud Services.

#### 1. Cloud Service

The Cloud Service is a hosted and managed version of IBM Maximo Application Suite (MAS) and provides an intelligent enterprise asset management (EAM) solution that uses data and AI across enterprise operations. IBM manages the infrastructure (network, storage, and compute resources), applies upgrades and fixes to the application, and maintains the IBM software, infrastructure, and applicable security and privacy controls.

##### Applications

The Cloud Service consists of a collection of Applications. An Application is a uniquely named software application program developed by or made available to access, or to be used by, the Cloud Services.

##### Cloud Service Environment

The Cloud Service provides the functional infrastructure for running the software for which IBM provides the support and necessary network, hardware, and system upgrades. The Cloud Service consists of one (1) Production Environment for all the Applications in use. Access to this system is restricted to IBM personnel or authorized users only. The Production Environment comprises the Cloud Service Applications, systems, and supporting systems infrastructure that Client accesses and uses on an operational basis to execute its business processes and transactions. The Production Environment includes redundancy and multi-active architecture for disaster recovery. Client may purchase additional non-production environments for uses such as development or testing.

##### AppPoint Consumption

The Cloud Service provides a common unit of consumption, called an AppPoint, for all Applications within the Cloud Service. AppPoints allow the Client to direct the consumption of each Application as needed.

The Cloud Service requires a base quantity of AppPoints identified as Base Install. The Base Install is for the set up and ongoing maintenance of the Cloud Service Environment.

The Base Install AppPoints are "Reserved". Reserved means that the AppPoints identified are allocated for the term of the contract and cannot be changed or exchanged for use of another Application or resource during that period.

Additionally, each Application requires a base quantity of AppPoints identified as Application Install. The Application Install is for the set up, hosting, and ongoing maintenance of the specific Application and its related resources.

Finally, Applications may require Monthly Usage AppPoints. Monthly Usage AppPoints provide entitlement in addition to the Application Install AppPoints for variable resources.

By default, Application Install and Monthly Usage AppPoints remain allocated as currently specified for the term of the contract. Client may change the allocation of Application Install or Monthly Usage AppPoints effective at the beginning of a calendar month upon 10 business days prior written notice to IBM.

See the section titled 'AppPoints Consumption Table' for the required Base Install, Application Install, and Monthly Usage AppPoints.

The following Applications are available in the Cloud Service:

## 1.1 Maximo Manage Application

The Maximo Manage Application provides robust asset lifecycle management and maintenance management functionality.

### 1.1.1 Maximo Industry Solutions

The following Maximo Industry Solutions provide additional, industry-specific functionality to Maximo Manage.

Industry Solution	Description
Maximo Aviation	Provides lifecycle management and maintenance management capabilities for both rotary and fixed wing aircraft.
Maximo Civil Infrastructure	Integrates current IBM asset lifecycle management capabilities to support operators in monitoring the condition of civil infrastructure, such as bridges, roads, and tunnels throughout the lifecycle of the infrastructure.
Maximo Nuclear	Provides an enterprise asset management system that helps manage the lifecycle of assets of nuclear plants and fleets.
Maximo Oil & Gas	Helps to integrate work and asset management, assisting organizations with meeting their health and safety requirements, and integrated operations for oil and gas businesses.
Maximo Transportation	Provides enterprise asset management for all types of transportation assets.
Maximo Utilities	Enables organizations in the electric, gas, and water utility industries to manage all their assets that are used in the transmission and distribution of electricity, gas, and water.

### 1.1.2 Maximo Manage AddOns

The following AddOns that extend the capabilities of Maximo Manage are available.

AddOn	Description
Maximo Asset Configuration Manager	Provides functionality that helps organizations manage the configuration of high-value, complex, and regulated assets such as aircraft and rail vehicles.
Maximo Connector for Oracle Applications	Provides bidirectional, process-wide connectivity between Maximo Manage and Oracle E-Business Suite.
Maximo Connector for SAP Applications	Provides bidirectional, process-wide connectivity between Maximo Manage and SAP ERP.
Maximo Connector for Workday	Provides the ability to replicate human resources employee data between Maximo Manage and Workday.
Maximo Health, Safety and Environment	Provides functionality to help organizations integrate work, asset management, and health and safety functions.
Maximo Mobile	Provides mobile functionality to enable technicians to access information on a mobile device.
Maximo Service Provider	Provides capabilities that can help organizations manage customer agreements, service delivery, customer billing, and supplier contracts.
Maximo Spatial	Provides functionality that enables organizations to visualize all assets and work in their geospatial context to optimize resources and decisions.

### 1.1.3 Maximo Manage Users

Maximo Manage Users are categorized as Self Service, Limited, Base, or Premium, which defines the scope of administration and application functionality to which they are entitled:

User	Description
Maximo Manage Self Service User	Entitlement enables users to self-service capabilities for: <ul style="list-style-type: none"> <li>• Service Requests</li> <li>• Desktop Requisitions</li> <li>• Requests (Maximo Oil &amp; Gas)</li> <li>• Create/Review Incidents (Maximo Health, Safety &amp; Environment)</li> <li>• Vehicle Requests (Maximo Transportation)</li> <li>• Graphical Appt Book (Maximo Scheduler)</li> <li>• Bill Review (Maximo Service Provider)</li> </ul>
Maximo Manage Limited User	Entitlement enables a user to work with a maximum of three modules within Maximo Manage, including Industry Solutions and AddOns. See the section titled "Maximo Manage Limited User Restrictions" for additional information.
Maximo Manage Base User	Entitlement enables a user to work with standard functionality within Maximo Manage, excluding Industry Solutions and AddOns.
Maximo Manage Premium User	Entitlement includes all the capabilities of a Maximo Manage Base User, plus enables a user to work with any installed Industry Solutions and AddOns.

## 1.2 Maximo Health Application

The Maximo Health Application provides a first step in managing the performance of critical assets. By capturing information from the asset itself, along with its age and maintenance history, organizations can quickly understand which assets are currently in poor health and need attention to prevent disruption.

## 1.3 Maximo Predict Application

The Maximo Predict Application helps identify and manage asset reliability risks that could adversely affect plant or business operations. The solution enables organizations to apply machine learning and analytics to improve maintenance strategies.

## 1.4 Maximo Health and Predict – Utilities Application

The Maximo Health and Predict – Utilities Application extends and enhances Maximo Health and Predict to offer capabilities needed by clients in the Utilities industry.

## 1.5 Maximo Monitor Application

The Maximo Monitor Application enables connectivity to devices and operational technology systems and allows application of analytics and AI-based anomaly detection and the building and configuring of custom dashboards.

## 1.6 Maximo Visual Inspection Application

The Maximo Visual Inspection Application enables building AI computer vision models with high levels of accuracy and deploying them for various asset monitoring and inspection purposes, including at the edge.

## 1.7 Maximo Assist Application

The Maximo Health Application enables asset managers, maintenance managers, and equipment manufacturers to obtain greater availability, reliability, and productivity from critical assets, and implement maintenance and repair procedures more effectively.

## 1.8 AppPoints Consumption Table

The following table defines the required Base Install, Application Install and Monthly Usage AppPoints needed for each Application.

Application	Install AppPoints	Monthly Usage AppPoints
Base Install	Base Install equals one hundred (100) AppPoints (Reserved)	Not Applicable

Application	Install AppPoints	Monthly Usage AppPoints
Maximo Manage	Maximo Manage Application Install equals one hundred-fifty (150) AppPoints	<p>For each Maximo Manage Self Service User:</p> <ul style="list-style-type: none"> <li>● Zero (0) AppPoints per User</li> </ul> <p>For each Maximo Manage Limited User:</p> <ul style="list-style-type: none"> <li>● Five (5) AppPoints per Concurrent User or</li> <li>● Two (2) AppPoints per Authorized User</li> </ul> <p>For each Maximo Manage Base User:</p> <ul style="list-style-type: none"> <li>● Ten (10) AppPoints per Concurrent User or</li> <li>● Three (3) AppPoints per Authorized User</li> </ul> <p>For each Maximo Manage Premium User:</p> <ul style="list-style-type: none"> <li>● Fifteen (15) AppPoints per Concurrent User or</li> <li>● Five (5) AppPoints per Authorized User</li> </ul>
Maximo Manage non-production Cloud Service Environments	<p>The first Maximo Manage non-production Cloud Service Environment includes the Base Install and the Maximo Manage Application Install and equals:</p> <ul style="list-style-type: none"> <li>● Seventy (70) AppPoints for deployments to support fifty (50) or fewer Maximo Manage users.</li> <li>● One hundred fifteen (115) AppPoints for deployments to support fifty-one (51) to one hundred (100) Maximo Manage users.</li> <li>● One hundred sixty (160) AppPoints for deployments to support one hundred one (101) to two hundred fifty (250) Maximo Manage users.</li> <li>● Two hundred five (205) AppPoints for deployments to support two hundred fifty one (251) to five hundred (500) Maximo Manage users.</li> </ul> <p>Each subsequent Maximo Manage non-production Cloud Service Environment includes the Base Install and the Maximo Manage Application Install and equals two hundred fifty (250) AppPoints.</p>	Not Applicable
Maximo Health	Maximo Health Application Install equals one hundred (100) AppPoints	<p>Each Maximo Health user equals:</p> <ul style="list-style-type: none"> <li>● Five (5) AppPoints per Concurrent User or</li> <li>● Two (2) AppPoints per Authorized User</li> </ul> <ul style="list-style-type: none"> <li>● Each one thousand (1,000) Maximo Health Scores equals one (1) AppPoint</li> </ul>

Application	Install AppPoints	Monthly Usage AppPoints
Maximo Health non-production Cloud Service Environments	<p>The first Maximo Health non-production Cloud Service Environment includes the Base Install and the Maximo Health Application Install and equals:</p> <ul style="list-style-type: none"> <li>• Seventy (70) AppPoints for deployments to support twenty-five (25) or fewer Maximo Health users.</li> <li>• One hundred fifteen (115) AppPoints for deployments to support twenty-six (26) to fifty (50) Maximo Health users.</li> <li>• One hundred sixty (160) AppPoints for deployments to support fifty-one (51) to one hundred (100) Maximo Health users.</li> <li>• Two hundred five (205) AppPoints for deployments to support one hundred one (101) to five hundred (500) Maximo Health users.</li> </ul> <p>Each subsequent Maximo Health non-production Cloud Service Environment includes the Base Install and the Maximo Health Application Install and equals two hundred fifty (250) AppPoints.</p>	Not Applicable
Maximo Predict	Maximo Predict Application Install equals three hundred (300) AppPoints	<ul style="list-style-type: none"> <li>• Each Maximo Predict Model equals five (5) AppPoints</li> <li>• Each one thousand (1,000) Maximo Predict Scores equals one (1) AppPoint</li> </ul>
Maximo Predict non-production Cloud Service Environments	<p>The first Maximo Predict non-production Cloud Service Environment includes the Base Install and the Maximo Predict Application Install and equals:</p> <ul style="list-style-type: none"> <li>• Ninety (90) AppPoints for deployments to support five (5) or fewer Maximo Predict Models or ten thousand (10,000) or fewer Maximo Predict Scores.</li> <li>• One hundred forty-two (142) AppPoints for deployments to support six (6) to ten (10) Maximo Predict Models or ten thousand one (10,001) to two hundred thousand (200,000) Maximo Predict Scores.</li> <li>• One hundred ninety-five (195) AppPoints for deployments to support eleven (11) to fifteen (15) Maximo Predict Models or two hundred thousand one (200,001) to one million (1,000,000) Maximo Predict Scores.</li> <li>• Two hundred forty-seven (247) AppPoints for deployments to support sixteen (16) to twenty (20) Maximo Predict Models or one million one (1,000,001) to two million (2,000,000) Maximo Predict Scores.</li> </ul> <p>Each subsequent Maximo Predict non-production Cloud Service Environment includes the Base Install and the Maximo Predict Application Install and equals three hundred (300) AppPoints.</p>	Not Applicable

Application	Install AppPoints	Monthly Usage AppPoints
Maximo Health Predict – Utilities	Maximo Health Predict – Utilities Application Install equals two hundred (200) AppPoints	<ul style="list-style-type: none"> <li>● Each Maximo Health Predict – Utilities Model equals five (5) AppPoints</li> <li>● Each one thousand (1,000) Maximo Health Predict – Utilities Scores equals one (1) AppPoint</li> </ul>
Maximo Health Predict – Utilities non-production Cloud Service Environments	<p>The first Maximo Health Predict – Utilities non-production Cloud Service Environment includes the Base Install and the Maximo Health Predict – Utilities Application Install and equals:</p> <ul style="list-style-type: none"> <li>● Fifty (50) AppPoints for deployments to support five (5) or fewer Maximo Health Predict – Utilities Models or ten thousand (10,000) or fewer Maximo Health Predict – Utilities Scores.</li> <li>● Eighty-seven (87) AppPoints for deployments to support six (6) to ten (10) Maximo Health Predict – Utilities Models or ten thousand one (10,001) to two hundred thousand (200,000) Maximo Health Predict – Utilities Scores.</li> <li>● One hundred twenty-five (125) AppPoints for deployments to support eleven (11) to fifteen (15) Maximo Health Predict – Utilities Models or two hundred thousand one (200,001) to one million (1,000,000) Maximo Health Predict – Utilities Scores.</li> <li>● One hundred sixty-two (162) AppPoints for deployments to support sixteen (16) to twenty (20) Maximo Health Predict – Utilities Models or one million one (1,000,001) to two million (2,000,000) Maximo Health Predict – Utilities Scores.</li> </ul> <p>Each subsequent Maximo Health Predict – Utilities non-production Cloud Service Environment includes the Base Install and the Maximo Health Predict – Utilities Application Install and equals two hundred (200) AppPoints.</p>	Not Applicable
Maximo Monitor	Maximo Monitor Application Install equals three hundred (300) AppPoints	<ul style="list-style-type: none"> <li>● Each one thousand (1,000) Maximo Monitor I/O Points equals ten (10) AppPoints</li> </ul>

Application	Install AppPoints	Monthly Usage AppPoints
Maximo Monitor non-production Cloud Service Environments	<p>The first Maximo Monitor non-production Cloud Service Environment includes the Base Install and the Maximo Monitor Application Install and equals:</p> <ul style="list-style-type: none"> <li>● Ninety (90) AppPoints for deployments to support one thousand (1,000) or fewer Maximo Monitor I/O Points.</li> <li>● One hundred forty-two (142) AppPoints for deployments to support one thousand one (1,001) to five thousand (5,000) Maximo Monitor I/O Points.</li> <li>● One hundred ninety-five (195) AppPoints for deployments to support five thousand one (5,001) to fifty thousand (50,000) Maximo Monitor I/O Points.</li> <li>● Two hundred forty-seven (247) AppPoints for deployments to support fifty thousand one (50,001) to three hundred thousand (300,000) Maximo Monitor I/O Points.</li> </ul> <p>Each subsequent Maximo Monitor non-production Cloud Service Environment includes the Base Install and the Maximo Monitor Application Install and equals three hundred (300) AppPoints.</p>	Not Applicable
Maximo Visual Inspection	Maximo Visual Inspection Application Install equals three hundred (300) AppPoints	<ul style="list-style-type: none"> <li>● Each Maximo Visual Inspection Model equals five (5) AppPoints</li> <li>● Each one thousand (1,000) Maximo Visual Inspection Inferences equals one (1) AppPoint</li> <li>● Each Maximo Visual Inspection Client Device equals one (1) AppPoint</li> </ul>

Application	Install AppPoints	Monthly Usage AppPoints
Maximo Visual Inspection non-production Cloud Service Environments	<p>The first Maximo Visual Inspection non-production Cloud Service Environment includes the Base Install and the Maximo Visual Inspection Application Install and equals:</p> <ul style="list-style-type: none"> <li>• Fifty (50) AppPoints for deployments to support one (1) Maximo Visual Inspection Model and ten thousand (10,000) or fewer Maximo Visual Inspection Inferences.</li> <li>• One hundred twelve (112) AppPoints for deployments to support one (1) Maximo Visual Inspection Model and ten thousand one (10,001) to two hundred thousand (200,000) Maximo Visual Inspection Inferences.</li> <li>• One hundred seventy-five (175) AppPoints for deployments to support two (2) to three (3) Maximo Visual Inspection Models or two hundred thousand one (200,001) to one million (1,000,000) Maximo Visual Inspection Inferences.</li> <li>• Two hundred thirty-seven (237) AppPoints for deployments to support four (4) Maximo Visual Inspection Models or one million one (1,000,001) to two million (2,000,000) Maximo Visual Inspection Inferences.</li> </ul> <p>Each subsequent Maximo Visual Inspection non-production Cloud Service Environment includes the Base Install and the Maximo Visual Inspection Application Install and equals three hundred (300) AppPoints.</p>	Not Applicable
Maximo Assist	Maximo Assist Application Install equals three hundred (300) AppPoints	<ul style="list-style-type: none"> <li>• Each Maximo Assist user equals five (5) AppPoints</li> </ul>
Maximo Assist non-production Cloud Service Environments	<p>The first Maximo Assist non-production Cloud Service Environment includes the Base Install and the Maximo Assist Application Install and equals:</p> <ul style="list-style-type: none"> <li>• Ninety (90) AppPoints for deployments to support sixty (60) or fewer Maximo Assist users.</li> <li>• One hundred forty-two (142) AppPoints for deployments to support sixty-one (61) to ninety (90) Maximo Assist users.</li> <li>• One hundred ninety-five (195) AppPoints for deployments to support ninety-one (91) to one hundred twenty (120) Maximo Assist users.</li> <li>• Two hundred forty-seven (247) AppPoints for deployments to support one hundred twenty-one (121) to five hundred (500) Maximo Assist users.</li> </ul> <p>Each subsequent Maximo Assist non-production Cloud Service Environment includes the Base Install and the Maximo Assist Application Install and equals three hundred (300) AppPoints.</p>	Not Applicable
Replica Databases	Fifty (50) AppPoints per Replica Database per Application.	Not Applicable

## 2. Data Processing and Protection Data Sheets

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the Cloud Services and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies to personal data contained in Content, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply.

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=A4E6AD20074D11ECADF816E2FD273C71>

## 3. Service Levels and Technical Support

### 3.1 Service Level Agreement

IBM provides the Client with the following availability service level agreement (SLA). IBM will apply the highest applicable compensation based on the cumulative availability of the Cloud Service as shown in the table below. The availability percentage is calculated as the total number of minutes in a contracted month, minus the total number of minutes of Service Down in the contracted month, divided by the total number of minutes in the contracted month. The Service Down definition, the claim process and how to contact IBM regarding service availability issues are in IBM's Cloud Service support handbook at [https://www.ibm.com/software/support/saas\\_support\\_overview.html](https://www.ibm.com/software/support/saas_support_overview.html).

Availability	Credit (% of monthly subscription fee*)
Less than 99.9%	2%
Less than 99.0%	5%
Less than 95.0%	10%

\* The subscription fee is the contracted price for the month which is subject to the claim.

### 3.2 Technical Support

Technical support for the Cloud Service, including support contact details, severity levels, support hours of availability, response times, and other support information and processes, is found by selecting the Cloud Service in the IBM support guide available at <https://www.ibm.com/support/home/pages/support-guide/>.

## 4. Charges

### 4.1 Charge Metrics

The charge metric(s) for the Cloud Service are specified in the Transaction Document.

The following charge metrics apply to this Cloud Service:

- An AppPoint is a common unit of value required for Client's authorized use of the Cloud Service.

The following metric definitions are usage-based metrics only and are converted to AppPoints for purchasing purposes.

- Concurrent User is a user simultaneously accessing the Cloud Service in any manner directly or indirectly (for example, through a multiplexing program, device, or application server) at any particular point in time. A person who is simultaneously accessing the Cloud Service multiple times counts only as a single Concurrent User.
- Authorized User is a unique user authorized to access the Cloud Services in any manner directly or indirectly (for example, through a multiplexing program, device or application server) through any means.
- Model is an algorithm that is trained by an Application to make classifications or predictions with a frequency of no more than one successful training completion per hour.
- Score is a classification or prediction output from an Application Model with a frequency of no more than one classification or prediction per hour.

- I/O Point is a data value written to the Maximo Monitor database by a distinct device with a frequency of no more than one write per minute.
- Inference is a classification or prediction output from a Maximo Visual Inspection Model and derived from processing image or video input with a frequency of no more than one classification or prediction per hour.
- Client Device is a single user computing device or special purpose sensor or telemetry device that requests the execution of or receives for execution a set of commands, procedures, or applications from or provides data to another computer system that is typically referred to as a server or is otherwise managed by the server. A Client Device may have some processing capability or be programmable to allow a user to do work.
- Replica Database is a synchronized copy of a single Application database made available to Client for read-only access.

## 4.2 Verification

Client will i) maintain, and provide upon request, records, and system tools output, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, and ii) promptly order and pay for required entitlements at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of the Cloud Service and for two years thereafter.

## 5. Additional Terms

For Cloud Service Agreements (or equivalent base cloud agreements) executed prior to January 1, 2019, the terms available at <https://www.ibm.com/acs> apply.

### 5.1 Maximo Manage Limited User Restrictions

A Limited User accessing Manage functionality of the Cloud Service (a) can use all modules for the limited purpose of running and viewing reports, viewing records as read only, changing the status of records, and updating Work Orders and conducting Inspections assigned to the Maximo Manage Limited User; and (b) can use without restriction a maximum of three (3) Maximo Manage modules (excluding Planning and Scheduling, Administration, Integration and Security and System Configuration).

### 5.2 Maximo Mobile Restrictions

- The IBM Maximo Mobile App ("App") downloaded from the Application Store(s) is designed for use with the Cloud Service. Client agrees to only use the App for that purpose.
- The App allows the user to take images of machines or other assets as part of using the Cloud Service. While this App is designed for images solely of assets, background may be inadvertently included. Client must ensure Client has all necessary permissions to take and use the images, including but not restricted to, permission to take images in the area in which Client is working. Client is solely responsible for the images, voice recordings, annotations and the like which are taken by the App and used by the Cloud Service.
- IBM may push certain notifications to Client's copy of the App. Client agrees to receive such notifications.
- As part of the operation of the App, certain data may be transmitted and stored, including, but not limited to, user id, phone numbers, email addresses, digital signature, geolocations, camera (for images and video), audio and similar personal information. Client may also choose to include other data of a personal or sensitive nature. To the extent Client controls any such data, Client is responsible for adhering to all applicable data privacy regulations.
- Client's entitlement to the use of the App is based on the number of Maximo Manage users based on the AppPoints purchased.
- These terms override any terms and conditions presented by the App upon first use.

### 5.3 Upgrades, Fixes and Maintenance Outages

IBM shall, at its sole discretion, schedule upgrades, fixes and planned maintenance outages for the Cloud Service Environment. Client does not have the option to opt out of or reschedule upgrades, fixes or planned maintenance.

## 6. Overriding Terms

### 6.1 Terms Applicable to the Cloud Services hosted on Amazon Web Services (AWS)

The following prevails over anything to the contrary in the base Cloud Service terms between the parties:

The Cloud Service application layer (in whole or in part) and Client's data and content are hosted on a third-party cloud service platform not managed by IBM. The Cloud Service infrastructure, certain aspects of the Cloud Service platform, and related services, including: data center, servers, storage and network; application and data backup; perimeter security and threat detection; and APIs for application deployment, monitoring and operation (collectively, the "Third Party Cloud Services") are hosted and managed by the third party provider. Accordingly, notwithstanding anything in this Service Description or the base services agreement under which this Cloud Service is provided (e.g., the IBM Cloud Services Agreement):

- a. If the provider of the Third Party Cloud Services notifies IBM that it has withdrawn or terminated its services or IBM's or Client's access to such services, IBM may (i) provide Client access to a functionally-equivalent IBM-hosted Cloud Service offering; or (ii) terminate the Cloud Service immediately upon the effective date of such termination by the third party provider by providing notice of termination to Client.
- b. IBM makes no warranties or conditions, express or implied, and IBM will have no liability to Client, regarding the Third-Party Cloud Services or to the Cloud Service to the extent dependent on the Third-Party Cloud Services. The foregoing disclaimer of liability does not apply to or limit compensation that may be payable under the Service Level Agreement section of this Service Description.
- c. The IBM Data Security and Privacy Principles (DSP) and Data Processing Addendum (DPA) do not apply to the Third Party Cloud Services or to the Cloud Service solely to the extent dependent on or under the control of the Third-Party Cloud Services or the third party provider. With respect to such Third Party Cloud Services and the Cloud Service to the extent dependent on or under the control of the Third Party Cloud Services or the third party provider, the data protection and technical and operational security measures for the Cloud Service will be no less than those described in the AWS Customer Agreement and its referenced attachments available here: <https://aws.amazon.com/agreement/>.



## Terms of Use

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### General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms applicable for Cloud Services Client may order under either the International Passport Advantage Agreement or the International Passport Advantage Express Agreement, as applicable ("Base Agreement") and are in addition to other applicable Transaction Documents (TDs) and Attachments, collectively the complete agreement ("Agreement") regarding transactions for a Cloud Service.

#### 1. Changes and Withdrawal of Cloud Services

- a. At any time and at IBM's discretion, IBM may change i) the IBM Cloud Services, including the corresponding published descriptions. The intent of any change will be to: (i) make available additional features and functionality; (ii) improve and clarify existing commitments; or (iii) maintain alignment to current adopted operational and security standards or applicable laws. Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services. Changes to the published descriptions, or published other documents, will be effective when published or on the specified effective date.
- b. Any changes that do not meet conditions specified in item a above will only take effect, and Client accepts, upon: (i) a new order; (ii) the term renewal date for the Cloud Services that automatically renew; or (iii) notification from IBM of the change effective date for ongoing services that do not have a specified term.

#### 2. Payment and Taxes

- a. IBM will invoice: (i) recurring charges at the beginning of the selected billing frequency term; (ii) overage and usage charges in arrears; and (iii) one-time charges upon IBM's acceptance of an order.
- b. If IBM has not otherwise committed to pricing during the term of a Cloud Service, then IBM may change charges on thirty days' notice.

#### 3. Term and Termination

- a. The term begins on the date IBM notifies Client that Client can access the Cloud Services. The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. For automatic renewal, unless Client provides written notice of non-renewal to IBM or the IBM Business Partner involved in the Cloud Services not to renew at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after such 30-day period.
- b. IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the use terms, including prohibited uses, set forth in Base Agreement and section 7(f) below. IBM will provide notice prior to a suspension as commercially reasonable. If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Services. Clients' failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire Cloud Services, is a material breach.
- c. Client may terminate the IBM Cloud Services on 30 days' notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; ii) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of any such Client termination above or a similar termination of a Non-IBM Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Cloud Service terms. Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.

#### 4. Hybrid and Dual Entitlement Offerings

Hybrid and Dual Entitlement offerings are Cloud Services which provide Client with access to Programs for use in the environment of Client's choice, as well as software as a service function provided in an IBM cloud environment. Programs, Support, and Program updates are provided in accordance with the Base Agreement and the following modifications:

- (1) Client's Program license ends when the Cloud Service subscription ends. Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;
- (2) any specified money back guarantee does not apply for identified Programs;
- (3) for Hybrid Entitlement offerings, separate entitlements are required for the simultaneous use of the Cloud Service and use of the Programs in a Client computing environment; and
- (4) for Dual Entitlement offerings, entitlements permit simultaneous use of the Cloud Services and use of the identified Programs in a Client computing environment.

## 5. General

- a. Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Services and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. **Otherwise Enabling Software is provided as-is, without warranties of any kind.**

## 6. Previous Base Agreement Versions

- a. For Clients acquiring Cloud Services under a Base Agreement version prior to version 10 dated Nov 2017, IBM SaaS offerings are IBM Cloud Services and the following additional terms apply.

### 6.1 Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services or other Services. Use of the IBM Cloud Services or other Services will not affect Client's ownership or license rights in Content.
- b. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services or other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data for processing in the IBM Cloud Services or other Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services or provide or allow access of Content to IBM to provide other Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services 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.

### 6.2 Warranty

- a. IBM warrants that it provides IBM Cloud Services or other Services using commercially reasonable care and skill and as described in the applicable Attachment or SD. These warranties end when the IBM Cloud Services or other Services end.

### 6.3 Scheduled Maintenance

- a. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.