

International Passport Advantage Agreement

Under this Agreement, Customer may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in DIR-TSO-3996, Attachments, and Transaction Documents (TDs) such as Terms of Use, Service Descriptions, quotes, and Proofs of Entitlement (PoEs). DIR-TSO-3996, this Agreement, Attachments, and applicable TDs are the complete agreement regarding transactions by which Customer acquires EPs. Customer (also identified as the Originating Site in the Passport Advantage Enrollment Form) and the IBM Originating Company that accepts the Customer's orders agree to coordinate the administration of this Agreement within their respective Enterprises, which includes the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Originating Company. The Customer is responsible for compliance with the terms for all Customer sites assigned a Passport Advantage Site Number (Site(s)) under this Agreement. In the event of conflict, an Attachment prevails over this Agreement and a TD prevails over both the Agreement and any Attachment. DIR-TSO-3996 and the terms accepted with it prevail over all other contract documents.

1. General

1.1 Acceptance of Terms

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

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

1.2 Payment

Customer agrees to pay all applicable charges as set forth in Appendix C, Pricing Index of DIR Contract DIR-TSO-3996. 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. Where taxes are based upon the location(s) receiving the benefit of a Cloud Service, Customer has an ongoing obligation to notify IBM of such location(s) if different than Customer's business address listed in the applicable TD.

1.3 Liability and Indemnity

Liability and indemnity shall be in accordance with the terms of DIR Contract DIR-TSO-3996, Appendix A, Sections 10. A. and 10. K.

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

Content consists of all data, software, and information that Customer or its authorized users provide, authorize access to, or inputs to an EP. Use of such EP will not affect Customer'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 EP, unless otherwise described in a TD.

Customer 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 in any EP. This includes Customer providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Customer will not input, provide, or allow such Content unless IBM has first agreed in writing to implement additional required security measures. IBM's Data Processing

Addendum at <https://www.ibm.com/terms> applies and supplements the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Content.

Customer is responsible for arranging for and paying applicable charges to their selected suppliers of telecommunications, including internet connectivity associated with accessing Cloud Services, Appliance Services, IBM Software Subscription and Support, and Select Support, unless IBM specifies otherwise in writing.

IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Customer, its personnel and authorized users, for example, name, title, business phone number, business email address, and postal address for business dealings with them. This provision does not apply to Content, but is included instead to comply with various laws and regulations which necessitate notification and consent for the use of such information in IBM's performance of its obligations under this contract and its applicable Transaction Documents.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. EPs are for use within Customer's Enterprise only, and may not be assigned, resold, rented, leased, or transferred to third parties. Any attempt to do so is void. Lease-back financing of Appliances is permitted. 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.

To the extent permissible under applicable law, 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 four years after the cause of action arose. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

1.5 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 the 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. Customer is responsible for its use of EPs.

Both parties agree to the application of the laws of the State of Texas, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the United States and 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 Customer or any user exports or imports Content or makes use of any portion of an EP outside the country of Customer's business address, IBM will not serve as the exporter or importer. If any provision of this Agreement 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.

1.6 Agreement Termination

The following terms supplement the Contract termination charges provided for in DIR Contract DIR-TSO-3996, Appendix A, Section 11. B. The Customer may terminate this Agreement without cause on one month's notice to IBM, and IBM may terminate this Agreement on three months' notice to the Customer. Once terminated, no further EPs may be acquired by any participating Customer Site under the Agreement.

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

The Customer will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for EPs for 24 consecutive months nor have Software Subscription and Support or Selected Support in effect.

Customer agrees to promptly discontinue use of and destroy all of Customer'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.

1.7 Eligible Products

IBM determines EPs, and assigns each EP a point value, which may be zero. IBM can add or withdraw EPs (including in CEO Product Categories), change an EP's, 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, Monthly License (ML), IBM Software Subscription and Support, or Selected Support, or a Cloud Service or an Appliance Service in its entirety, on 12 months' written notice to all then current Customers by published announcement, letter, or e-mail. Customer understands that as of the effective date of such withdrawal, Customer may not increase its level of use beyond the authorizations already acquired without IBM's written consent, renew or purchase that offering; and if Customer renewed the offering prior to the notice of withdrawal, IBM may either (a) continue to provide that offering until the end of the then current term or (b) provide a prorated refund.

1.8 Renewal

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 Customer's Passport Advantage Agreement Anniversary.

To reinstate any expired Software Subscription and Support coverage, Selected Support, a Fixed Term License or Appliance Services, Customer 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 an ML, Customer selects a renewal option at the time of order. At each renewal of an ML Commitment Term, IBM may change the charges applicable to the renewed Commitment Term and Customer agrees to pay then-current under Appendix C charges as specified in a TD or in a renewal quote made available to Customer no less than 60 days prior to the expiration of the then current term. Customer may change their selected renewal option for a Commitment Term by giving IBM notice in writing no less than 30 days before the end of that Commitment Term.

For a Cloud Service, Customer selects a renewal option at the time of order.

1.9 Compliance Verification

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all EPs is in compliance with this Agreement including the licensing and pricing qualification terms referenced in this Agreement (Passport Advantage Terms). Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

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

Customer agrees that, upon written notice from IBM and the independent auditor, any confidential information provided to the independent auditor or to IBM through the independent auditor, as reasonably required for compliance verification, shall be provided, and Customer consents to the exchange of such information between Customer, IBM and the independent auditor, pursuant to the terms of the IBM Agreement for Exchange of Confidential Information or such other general confidentiality agreement in place between Customer and IBM, unless Customer and the independent auditor agree, in writing, to the use of an alternate confidentiality agreement, within ninety (90) days of a request for verification.

The auditor will afford Client an opportunity to review all information and documentation reviewed by the auditor, and the findings, correct any factual errors and annotate the findings with Client's position before they are shared with IBM. IBM will notify Customer in writing if any such verification indicates that Customer has used any EPs in excess of its authorized use or is otherwise not in compliance with Passport Advantage Terms, including identification of the products and the amounts of excess use. Not later than 60 days following the findings being shared with IBM, Client agrees to provide to IBM any written evidence that Client may have demonstrating mitigating circumstances for such findings and IBM and Client agree to review such evidence

during such 60 days. Customer agrees to promptly pay directly to IBM the determined charges that IBM specifies in an invoice for 1) any such excess use, 2) IBM Software Subscription and Support and Selected Support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional contractually binding or legally obligated charges and other liabilities (such as taxes), determined as a result of such verification.

1.10 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 under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product); see <https://www.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 Processor Value Units (PVUs) associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at <https://www.ibm.com/software/howtobuy/passportadvantage/valueunitcalculator/vucalc.wss>.

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

If at any time IBM becomes aware of circumstances indicating that Customer is not operating all or a portion of Customer's environment in accordance with applicable Sub-Capacity Licensing requirements, IBM may declare Customer's Enterprise, or any applicable portion of Customer's Enterprise, ineligible for Sub-Capacity Licensing and will provide Customer with notice of any such determination. Customer shall have 30 days to provide IBM information sufficient for IBM to determine that Customer is in full compliance with the applicable Sub-Capacity Licensing requirements, in which case IBM shall withdraw its determination of ineligibility. Otherwise, Customer agrees to acquire sufficient additional licenses and IBM Software Subscription and Support entitlements necessary for full capacity usage within the identified Customer environment at then current prices.

The reporting tool for Sub-Capacity Licensing requirements is the IBM License Metric Tool. Use of ILMT for Sub-Capacity Licensing requires 1) installation and configuration the IBM License Metric Tool ("ILMT") within 90 days of first use of an eligible sub-capacity product in an eligible virtualization environment (or comply with the manual usage tracking requirements if you qualify for such an exception); and 2) production, on a quarterly basis, ILMT reports, retain such reports for at least two years. ILMT reports are interpretable by persons of ordinary software asset management skills.

1.11 Customer's Reporting Responsibilities

For Sub-Capacity usage of EPs, Customer agrees to install and configure the most current version of IBM's license metric tool (ILMT) within 90 days of Customer'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 Virtualization Environment or Eligible Sub-Capacity Product, ii) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider (an entity that provides information technology services for end user customers, either directly or through a reseller), and Customer has not contracted with a Service Provider to manage Customer's environment in which EPs are deployed, and the total physical capacity of Customer's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity Licensing terms, is less than 1,000 PVUs, or iii) when Customer's servers are licensed to full capacity.

For all instances where ILMT is not used, and for all non PVU-based licenses, Customer is required to manually manage and track Customer'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 <https://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. Reports (generated by ILMT or manual if Customer meets manual reporting exemptions) must be prepared at least once per quarter and retained for a period of not less than 2 years. 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.

Customer will promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer will subscribe to the IBM Support notifications via <https://www.ibm.com/support/mynotifications> in order to be notified when such fixes become available.

Customer will not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly, i) the ILMT audit records, ii) the ILMT Program, or iii) Audit Reports that Customer submits to IBM or to an independent auditor. The foregoing does not apply to changes, modifications or updates to ILMT expressly provided by IBM, including through notifications.

Customer will assign the necessary personnel in Customer's organization as points of contact concerning questions on Audit Reports or inconsistencies between report contents, license entitlement, or ILMT configuration; and promptly place an order with IBM or Customer's IBM reseller if reports reflect EP use over Customer's authorized level. IBM Software Subscription and Support and Selected Support coverage will be charged as of the date Customer exceeded Customer's authorized level.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the United States and 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, Cloud Services, and Appliance Services using commercially reasonable care and skill as described in this Agreement, Attachment, and TD. These warranties end when such support or service ends.

IBM warrants that an IBM 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 an IBM Machine Component of an Appliance does not function as warranted during the warranty period and IBM is unable to either i) make it do so, or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

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. Unless otherwise specified in an Attachment or TD, IBM offers Non-IBM EPs without warranties of any kind. Third parties provide services and licensed products directly to Customer under their own agreements. Third parties may provide their own warranties to Customer. IBM will identify IBM EPs it does not warrant.

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 License Information (LI) documents.

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, Customer 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 Customer's authorizations.

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

3.1 Money-back Guarantee

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

3.2 Conflict between this Agreement and the IPLA

If there is a conflict between the terms of DIR Contract DIR-TSO-3996, this Agreement, including its Attachments and TDs, and those of the IPLA, including its LI, the terms of DIR Contract DIR-TSO-3996 prevail. The IPLA and its LIs are available on the Internet at <https://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. Customer agrees to terminate Customer's use of the replaced Programs when Customer installs the replacement Programs.

3.4 Monthly Licenses

Monthly License Programs (ML Programs) are IBM Programs provided to Customer for a monthly license charge. Monthly Licenses have a term that begins on the date that Customer's order is accepted by IBM and continues for a period Customer commits to pay IBM (a Commitment Term) as specified in the TD. Customer may terminate a current Commitment Term before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.5 Fixed Term Licenses

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the Anniversary date. A Fixed Term License is for the definite time period specified by IBM in a TD. Customer may terminate a current Fixed Term License before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

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 Customer's PoE(s), Customer 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, Customer 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. Customer agrees not to tamper with this disabling device and take precautions to avoid any loss of data.

3.7 CEO (Complete Enterprise Option) 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 Customer's first (primary) CEO Product Category, Customer must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Customer must meet the applicable minimum initial order quantity requirement but is not required to acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category.

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 Customer-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.

While IBM Software Subscription and Support is in effect, IBM makes available defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available. Once IBM Software Subscription and Support has been allowed to lapse, these benefits will no longer be available to Customer if they had been made available while IBM Software Subscription and Support was in effect and Customer chose not to exercise that right.

While IBM Software Subscription and Support is in effect, IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together

“Support”). Consult the IBM Software Support Handbook for details at <https://www.ibm.com/software/support/handbook.html>. 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, Customer 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 <https://www.ibm.com/software/support/lifecycle>.

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

If Customer requests to renew expiring IBM Software Subscription and Support at a lesser quantity of IBM Program uses and installations than the expiring quantity, Customer must provide a report that verifies current IBM Program usage and installation, and may be required to provide other compliance verification information.

Customer shall not use IBM Software Subscription and Support benefits for IBM Programs for which Customer has not fully paid for IBM Software Subscription and Support. If Customer does, Customer must acquire IBM Software Subscription and Support reinstatement sufficient to cover all such unauthorized use at then current IBM prices.

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 Customer with assistance in designing and developing applications based on Customer’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. Customer 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.

When Customer acquires an Appliance directly from IBM, IBM transfers title to a MC to Customer or, if applicable, Customer’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, Customer will allow installation within 30 calendar days of shipment or additional charges may apply. Customer will promptly install or allow IBM to install mandatory engineering changes. Customer installs a Customer-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 by, used with or generated by a Machine Component, that permit the operation of the Machine Component’s processors, storage, or other functionality as stated in its specifications. Customer 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 Customer 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 Subscription and Support as a single offering as further described in the Appliance Support Handbook at

<https://www.ibm.com/software/support/handbook.html>.

One year of Appliance Services, starting on the Warranty Start Date specified in a TD, is included with the purchase of an Appliance. Thereafter, automatic renewal terms apply. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Customer 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 30 calendar days. A replacement takes on the warranty or maintenance status of the replaced part. When Customer returns an Appliance to IBM, Customer 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. Cloud Services

Cloud Services are EPs provided by IBM and made available via a network. Cloud Services are not Programs but may require Customer to download enabling software to use a Cloud Service as specified in a TD.

Customer may access and use a Cloud Service only to the extent of authorizations acquired by Customer. Customer is responsible for use of Cloud Services by any party who accesses the Cloud Service with Customer'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.

Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings Terms of Use. Each Cloud Service is described in a TD. Terms of Use and Service Descriptions can be viewed at <https://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/>. Cloud Services are designed to be available 24/7, subject to maintenance. Customer will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in a TD.

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

A Cloud Service subscription period begins on the date that IBM notifies Customer that Customer has access and ends on the date specified in the TD. During a Cloud Service subscription period, Customer may increase Customer's subscribed level, but may only decrease the subscribed level at the end of a subscription period when renewing.