Service Description

Weather Company Max Solution

This Service Description describes the Cloud Service IBM provides to Client. Client means the contracting party and its authorized users and recipients of the Cloud Service. The applicable Quotation and Proof of Entitlement (PoE) are provided as separate Transaction Documents.

1. Solution Description
Weather Company media products assist broadcasters with managing the production of weather and traffic presentations, including the look of weather and traffic data across multiple media platforms, including on-air, web, mobile, and social platforms. A typical configuration of Weather Company media products include base and optional components consisting of: workstation hardware, software offerings, and data feeds.

1.1 Software Offerings
The following Programs may be licensed to Client as either a perpetual license or a fixed term license unless otherwise designated in the Program description below. Client's PoE will designate the license type granted to Client.

1.1.1 Weather Company Max Solution Software
a. Weather Company Max Weather
This Program is the base software offering and includes the capability to build multi-dimensional weather presentations using a variety of tools, Weather Company and Client provided digital media, and a weather data feed.

b. Base Add-on Offerings
   (1) Weather Company Max Weather and Storm
   Adds the ability to perform storm tracking operations, plus optionally integrate a local radar (that can be licensed separately from IBM), all from a single user interface.

   (2) Weather Company Max Studio
   Uses MAGICTRAK technology, or customer-sourced touch screen monitor to ensure that weather broadcasters never have to leave the key wall, or step away from the touchscreen for breaking weather and other daily weather coverage, and to do so in a non-linear fashion.

   (3) Weather Company Max Connect
   An application for Apple iPad Pro that enables a weather presenter to drive and interact with many of the Weather Company media products from Max Storm, to Max Reality, from the studio or even on remote locations (with appropriate connectivity).

   (4) Weather Company Max Sky
   Adds unique and visualizations of day part forecasts to help add variety to weather broadcasting, and includes a simple sponsor opportunity to attract advertisers.

   (5) Weather Company Max Reality
   Visualizes weather data by using advanced augmented reality technology to create, 3-D images of Max visual objects, storms and atmospheric events that enhance routine weather broadcasts. Reality also includes the ability to incorporate virtual set technology or combine both physical and virtual sets in a single broadcast.

   (6) Weather Company Max Complete Solution
   A bundle of Max with Max Storm, Max Sky, Max Studio, Max Sky, and Max Connect. Does not include Max Reality or Max Traffic.

   (7) Weather Company Max Traffic
   Allows the display of traffic flow data from INRIX, color coded for speed, and also INRIX incident data to depict traffic accidents, disabled vehicles, construction, and the like. Max Traffic can be combined with base Max weather (or Max with Storm) to allow the inclusion of weather information with Traffic displays from a single interface.
(8) **Weather Company Max Street Level Mapping Data**
This Program is licensed under a perpetual license grant only. It consists of a database of highways, roads and streets for the customer area of interest. These data are automatically displayed on the Max/Max Storm, and / or Max Traffic applications with a look and feel as designed by the end user.

(9) **Weather Company Max Engage with Watson**
Leverages augmented intelligence (AI) and automation to aid in the detection of weather and traffic events for which it can create, publish, and target videos, images and text that are distributed via Mobile, Web, Facebook, Twitter, Apple TV, Roku, FireTV, and more, all without the need of a meteorologist.

1.1.2 **Weather Company Max Cirrus**
This entry-level implementation of the software portion of the solution includes the following Program offerings:

a. **Weather Company Max Cirrus – Base**
This solution is intended for broadcast outlets with more modest weather presentation needs. It is based on the Max Weather architecture, but does not include on premise data handling and instead all data is delivered via the cloud. The Base package of Cirrus includes a library of pre-built on-air scenes, but does not include the ability to edit the scenes, or the ability add Max Sky or Max Reality.

b. **Weather Company Max Cirrus – Premium**
This solution is intended for broadcast outlets with medium weather presentation needs. It is based on the Max Weather architecture, but does not include on premise data handling and instead all data is delivered via the cloud. The Premium package of Cirrus includes a library of pre-built on-air scenes that can be edited and also expands the Max toolset beyond the Base package. It does not include the ability to add Max Sky or Max Reality.

c. **Weather Company Max Cirrus – Traffic Base**
This solution is intended for broadcast outlets with more modest traffic presentation needs. It is based on the Max Traffic architecture, but does not include on premise data handling and instead all data is delivered via the cloud. The Base package of Cirrus includes a library of pre-built on-air scenes, but does not include the ability to edit the scenes. It does not include the ability to add Max Sky or Max Reality.

d. **Weather Company Max Cirrus – Traffic Premium**
This solution is intended for broadcast outlets with medium traffic presentation needs. It is based on the Max Traffic architecture, but does not include on premise data handling and instead all data is delivered via the cloud. The Premium package of Cirrus includes a library of pre-built on-air scenes that can be edited and also expands the Max Traffic toolset beyond the Base package. It does not include the ability to add Max Sky or Max Reality.

1.2 **Workstation Hardware – Weather Company Max Solution Systems**
Weather Company Max Solution software offerings are implemented and deployed on a set of Weather Company Max Solution System workstations. Specific workstations are used for data acquisition and storage, digital media collection and serving, digital publishing, and on-air broadcasting.

The Client’s specific configuration and quantity of workstations from the list below are specified on the Transaction Document and based on Client requirements at the time of sale.

a. **Weather Company Max Solution – Workstation**
A high-end HP workstation with nVIDIA graphics and AJA video output subsystem that is the primary system upon which the organization can display high quality video for broadcast.

b. **Weather Company Max Solution – Digital Content System**
An HP-based workstation with nVIDIA graphics used for digital content production for the organization's digital properties (web, mobile, social), as needed.

c. **Weather Company Max Solution – Dual Core**
A pair of HP-based workstations that receive and warehouse weather, traffic (or weather and traffic) data, and also serve as a central depository for both general and organization-specific content (e.g.
icons, banners, Max scenes, etc.) that are used by the other Weather Company Max Solution Systems (e.g. Workstation and Digital Content System).

d. **Weather Company Max Solution – Super Dual Core**
   A pair of HP-based workstations that receive and warehouse weather, traffic (or weather and traffic) data, and also serve as a central depository for both general and organization-specific content (e.g. icons, banners, Max scenes, etc) that are used by the other Weather Company Max Solution Systems (e.g. Workstation and Digital Content System). This solution includes Microsoft Windows Server operating system to allow more connections from the main Weather Company Max Solution workstations that is provided by the standard Dual Core solution.

1.3 **Cloud Services – Weather Company Max Solution Data**

Weather Company Max Solution Data includes geography-specific packages, including Worldwide, European, Eastern Pacific, or US. Each contains a wide variety of observed surface data, satellite, and weather model data.

"Data" means weather or traffic data delivered via the Cloud Service (including without limitation observations, forecasts, maps, and graphs), as described below.

1.3.1 **Weather Company Max Data – Europe**

This data package includes a wide variety of observed surface data, satellite, and weather model data from the Global Forecast System (GFS) and European Centre for Medium-Range Weather Forecasts (ECMWF) government models, the proprietary Weather Company Deep Thunder model and Tropical data from the US National Hurricane Center (NHC) and the Joint Typhoon Warning Center (JTWC) advisories, NHC spaghetti model plots, observed sea surface temperature, and wave heights. It also includes a European radar mosaic.

The Europe package requires one of the following: Weather Company Max Weather, Max Weather and Storm, Cirrus Weather Base, or Cirrus Weather Premium.

1.3.2 **Weather Company Max Data – World**

This data package includes a wide variety of observed surface data, satellite, and weather model data from the Global Forecast System (GFS) and European Centre for Medium-Range Weather Forecasts (ECMWF) government models, the proprietary Weather Company Deep Thunder model and Tropical data from the US National Hurricane Center (NHC) and the Joint Typhoon Warning Center (JTWC) advisories, NHC spaghetti model plots, observed sea surface temperature, and wave heights.

World package requires one of the following: Weather Company Max Weather, Max Weather and Storm, Cirrus Weather Base, or Cirrus Weather Premium.

1.3.3 **Weather Company Max Data – Sky**

This Data package enables the Max Sky solution by providing forecast parameters from the proprietary 12KM Weather Company Deep Thunder model for North America.

The Sky data package requires one of the following: Weather Company Max Weather or Max Weather and Storm.

1.3.4 **Weather Company Max Data – Sky Global**

This Data package enables the Max Sky solution by providing forecast parameters from the proprietary 13KM Weather Company Deep Thunder model.

The Sky data package requires one of the following: Weather Company Max Weather or Max Weather and Storm.

1.3.5 **Weather Company Max Data – Storm Eastern Pacific**

This Data package includes a wide variety of observed surface data, satellite, and weather model data from the Global Forecast System (GFS) and European Centre for Medium-Range Weather Forecasts (ECMWF) government models, the proprietary Weather Company Deep Thunder model (including special 12 and 4 Km US domains) and Tropical data from the US National Hurricane Center (NHC) and the Joint Typhoon Warning Center (JTWC) advisories, NHC spaghetti model plots, observed sea surface temperature, and wave heights.

Storm Eastern Pacific package requires one of the following: Weather Company Max Weather, Max Weather and Storm, Cirrus Weather Base, or Cirrus Weather Premium.
1.3.6 Weather Company Max Data – Traffic
This Data package includes traffic flow and incident (traffic accidents, disabled vehicles, construction information, etc.) data from INRIX.

The package requires one of the following: Weather Company Max Traffic, Cirrus Traffic Base, or Cirrus Traffic Premium.

1.4 Cloud Services – Weather Company Max Add-on Offerings:

1.4.1 Weather Company Max Engage for Enterprise with Watson
Weather Company Max Engage for Enterprise with Watson provides weather and traffic monitoring and geographic targeting for enterprise operations and staff audiences who wish to monitor weather conditions and take appropriate business actions. It automatically publishes weather and traffic-related alerts, and is used independent of Weather Company Max Solution.

1.4.2 Weather Company Max Social Post Turbo
Delivers the ability to post text, videos or snapshots to Facebook and Twitter, and insert ads into Facebook using sponsored content.

This offering requires a configuration of Weather Company media products that includes base and optional components consisting of: workstation hardware, software offerings, and data feeds.

1.4.3 Weather Company Max Social Post Turbo and Dialog
Includes all of the capabilities listed for Max Social Post Turbo, and additionally, Social Dialog, which allows the user to pull content into the system from Facebook, Instagram and Twitter.

This offering requires a configuration of Weather Company media products that includes base and optional components consisting of: workstation hardware, software offerings, and data feeds.

1.5 Maintenance and Subscription & Support Offerings

1.5.1 Weather Company Max Solution Maintenance
Weather Company Max Solution Maintenance offerings entitle Clients to support and software updates. There is one annual price regardless of the number of perpetual or term software licenses purchased.

a. Weather Company Max Solution Annual S&S
   entitles support and software updates for all Weather Company Max Solution offerings except for the Weather Company Max Traffic and Weather Company Max Street Level Mapping Data offerings.

b. Weather Company Max Traffic Annual S&S
   entitles support and software updates for Weather Company Max Traffic.

c. Weather Company Max Street Level Mapping Data Annual S&S
   entitles support and software updates for Weather Company Max Street Level Mapping Data.

1.5.2 Weather Company Max Solution – Peripherals Annual Hardware Maintenance
This maintenance offering entitles Client to support for non-HP peripherals such as graphics cards. Hardware maintenance is priced as a single, site-wide flat fee, covering all peripherals on site, across multiple installed systems.

2. Content and Data Protection
The Data Processing and Protection Data Sheet (Data Sheet) provides information specific to the Cloud Service regarding the type of Content enabled to be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. Any details or clarifications and terms, including Client responsibilities, around use of the Cloud Service and data protection features, if any, are set forth in this section. There may be more than one Data Sheet applicable to Client’s use of the Cloud Service based upon options selected by Client. The Data Sheet may only be available in English and not available in local language. Despite any practices of local law or custom, the parties agree that they understand English and it is an appropriate language regarding acquisition and use of the Cloud Services. The following Data Sheet(s) apply to the Cloud Service and its available options.

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

Link(s) to the applicable Data Sheet(s):

Weather Company Max Solution Data

Weather Company Max Social

Weather Company Max Engage for Enterprise

Client is responsible to take necessary actions to order, enable, or use available data protection features for a Cloud Service and accepts responsibility for use of the Cloud Services if Client fails to take such actions, including meeting any data protection or other legal requirements regarding Content.

IBM's Data Processing Addendum at http://ibm.com/dpa (DPA) and DPA Exhibit(s) apply and are referenced in as part of the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in Content. The applicable Data Sheet(s) for this Cloud Service will serve as the DPA Exhibit(s).

3. Technical Support

Technical support for the Cloud Service is provided with the Cloud Service. IBM's software as a service support guide available at https://www-01.ibm.com/software/support/saas_support_guide.html provides technical support contact information and other information and processes. Technical support is offered with the Cloud Service and is not available as a separate offering.

Technical support for the software offerings and the workstation hardware are also provided to Client. Details of how to obtain technical support for software offerings and workstation hardware will also be detailed in the IBM Software as a Service Support Handbook.

4. Entitlement and Billing Information

4.1 Charge Metrics

The solution features are available under the charge metric specified in the Transaction Document:

a. Hundred Thousand Population is a unit of measure by which the offering can be obtained. A Population is all the inhabitants of a particular geographic area. Sufficient entitlements must be obtained to cover the total Population, as externally reported, that can benefit from the offering, rounded up to the nearest Hundred Thousand, during the measurement period, if applicable, specified in Client's PoE or Transaction Document.

For the purpose of these offerings, a Population is the Broadcast Area Population (BAP) that can receive a broadcast signal from the Client.

b. Item is a unit of measure by which the offering can be obtained. An Item is a Client Device. A 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. Multiple Client Devices can share access to a common server. A Client Device can have some processing capability or be programmable to allow a user to do work.

Sufficient entitlements must be obtained to cover every Item related to the use of the offering as specified in Client's PoE or Transaction Document.

c. Location is a unit of measure by which the Weather Company Max Solution – Peripherals Maintenance can be obtained. A Location is a single physical site corresponding with Client's business address for such physical site. Sufficient entitlements must be obtained to cover the number of Locations the peripherals will reside during the measurement period specified in Client's PoE or Transaction Document.
d. Thousand Active User is a unit of measure by which the offering may be obtained. An Active User is a unique person who has accessed the offering in any manner directly or indirectly (for example: through a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Active Users, rounded up to the nearest one Thousand, who have accessed the offering during the measurement period, if applicable, specified in Client's PoE or Transaction Document.

4.2 Overage Charges
If actual usage of the Cloud Service during the measurement period exceeds the entitlement specified in the PoE, an overage charge will be billed at the rate specified in the Transaction Document in the month following such overage.

4.3 Billing Frequency
Based on selected billing frequency, IBM will invoice Client the charges due at the beginning of the billing frequency term, except for overage and usage type of charges which will be invoiced in arrears.

4.4 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. Term and Renewal Options
The term of the solution begins on the date IBM notifies Client of their access to the Cloud Service, as documented in the PoE. The PoE will specify whether the solution renews automatically, proceeds on a continuous use basis, or terminates at the end of the term.

For automatic renewal, unless Client provides written notice not to renew at least 90 days prior to the term expiration date, the solution will automatically renew for the term specified in the PoE.

For continuous use, the solution will continue to be available on a month to month basis until Client provides 90 days written notice of termination. The solution will remain available to the end of the calendar month after such 90 day period.

6. Warranty
6.1 Program Warranties
IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

If a Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months’ charges) and Client's license or right to use it terminates.

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

Third parties may provide their own warranties to Client.
6.2 **Non-IBM Machine Warranty Disclaimer**

IBM does not warrant uninterrupted or error-free operation of non-IBM machines. Non-IBM machines are sold under this SD as-is, without warranties of any kind unless otherwise specified in a TD. Third parties may provide their own warranties to Client.

Notwithstanding the above, new HP workstations include a 5 year warranty with next business day service provided by HP, exclusive of holidays.

7. **Cloud Service Additional Terms**

7.1 **General**

Client agrees IBM may publicly refer to Client as a subscriber to the Cloud Services in a publicity or marketing communication.

Client may not use Cloud Services, alone or in combination with other services or products, in support of any of the following high risk activities: design, construction, control, or maintenance of nuclear facilities, mass transit systems, air traffic control systems, automotive control systems, weapons systems, or aircraft navigation or communications, or any other activity where failure of the Cloud Service could give rise to a material threat of death or serious personal injury.

7.2 **Cloud Service Use Limitation**

The Cloud Services may only be used with the overall Weather Company Max Solution offering components. Cloud Services may not be used separate from Client's purchased solution configuration.

7.3 **Restrictions on Usage of Data**

a. Client shall i) use commercially reasonable efforts to prevent any portion of the Data from being collected or extracted from Client's computer systems, products or control ("Client's Custody") and ii) promptly notify IBM of any known or reasonably suspected collection or extraction of Data from Client's Custody. The parties shall then discuss in good faith and attempt to determine a commercially reasonable course of action to prevent such activity in the future. In the event the parties fail to agree upon or implement such commercially reasonable course of action within five (5) business days from the initial notice, then IBM shall have the right to suspend delivery of the Data until such time as necessary steps are taken to protect the Data residing in Client's Custody.

b. Client acknowledges that within the Data there may be certain third party data elements and agrees that in the event receipt of such data by IBM is terminated for any reason, IBM will have the right to terminate transmission of such data and to provide substitute products hereunder.

c. Client shall publish and adhere to Client's privacy policies in connection with Client's access, use, sharing and storage of information collected through or in relation to its use of the Data.

d. Client acknowledges IBM may change the style, form or Data of, and eliminate or discontinue segments of, the Data from time to time and at any time in its sole discretion; provided, IBM will include Client in its communications to similarly situated customers regarding material changes in the Data.

e. When Client displays, transmits, exhibits, distributes, demonstrates or otherwise conveys the Data in any form or manner accessible by a third party (e.g. Client's customers, business partners or product end users) ("Third Party Facing Application"), Client agrees that:

1. Client shall not imply, directly or indirectly that IBM provides, endorses, sponsors, certifies or approves of any other Data included within a Third Party Facing Application or any products or services advertised near the Data.

2. Client's transmission and display of the Data shall be without interruption and in conformance with the following technical specifications and performance standards as may be amended from time to time:

   a. IBM reserves the right to establish and limit the maximum frequency with which Client may call the data feed for a given location ID requesting a data set for that location ID. During the time period in between refresh periods, it is Client's responsibility to cache the data.

   b. Data Display:

      Client shall provide IBM with an opportunity to review its usage of the Data for a period of not less than five (5) business days before making the Data available on or through a
Third Party Facing Application. IBM shall have the right to disapprove the manner in which the Data is displayed within a Third Party Facing Application provided that IBM's review and approval will not be unreasonably withheld or delayed. For Third Party Facing applications, Client must monitor the functionality, performance and appearance of the Data so as to assess, promptly notify and remedy any adverse impact observed.

f. Upon termination of access to this solution, Client must delete all Data from its systems.

g. All social media data input into the Clout Service shall be deemed Content and the sole responsibility of Client.

7.4 Country Limitations on Usage

Client is responsible for, and IBM's obligations under this SD shall be conditioned on Client determining whether its use of the Data is permissible and, to the extent necessary, obtaining, all necessary licenses, permits, approvals or authorizations from any governmental entity or agency in the country in which it operates or uses the Data.

7.5 As Is Materials

ALL DATA AND WEATHER AND WEATHER-RELATED INFORMATION, FORECASTS AND ALERTS, ARE PROVIDED "AS IS", AND IBM SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, RELIABILITY, COMPLETENESS OR AVAILABILITY OF SUCH MATERIALS.

8. Software Offering Additional Terms

8.1 Program License

A Program is an IBM-branded computer program and related material available for license subject to the payment of charges. Programs do not include Machine Code or Project Materials as those terms may be defined in an Attachment. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Client is granted a nonexclusive license to: a) use the Program only up to its authorizations and subject to this SD, the Agreement and any relevant TDs; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available for additional fees or under different terms. Client is not granted unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified below.

The license granted for a Program is subject to Client:

a. reproducing copyright notices and other markings;

b. ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;

c. not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and

d. not using any of the elements of the Program or related licensed material separately from the Program.

The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements.

Unless your Agreement specifically says otherwise, the following will apply:

a. Charges, Taxes, Payment and Verification

Client will: i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including Program licenses and metrics, such as sub-capacity usage; and ii) promptly order and pay for required entitlements (including associated S&S) 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 any TD and for two years thereafter.

b. Liability and Indemnity
IBM has no responsibility for claims based on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Client's Content, or any Client materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

c. Termination

IBM may terminate Client's license to use a Program if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program after either party has terminated the license.

8.2 Separately Licensed Code

The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. Each of the components listed below is considered "Separately Licensed Code". IBM Separately Licensed Code is licensed to Licensee under the terms of the applicable third party license agreement(s) set forth in the Exhibits at the end of this Service Description. Notwithstanding any of the terms in the Agreement, or any other agreement Licensee may have with IBM, the terms of such third party license agreement(s) govern Licensee's use of all Separately Licensed Code unless otherwise noted below.

Future Program updates or fixes may contain additional or updated Separately Licensed Code. Such Separately Licensed Code and related licenses will be provided to Licensee prior to the update or fix being applied. Licensee acknowledges that Licensee has read and agrees to the license agreements provided. If Licensee does not agree to the terms of these third party license agreements, Licensee may not use the Separately Licensed Code.

For Programs acquired under the Program terms defined in this Service Description and Licensee is the original Licensee of the Program, if Licensee does not agree with the third party license agreements, Licensee may return the Program to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term.

Note: Notwithstanding any of the terms in the third party license agreement, the Agreement, or any other agreement Licensee may have with IBM:

a. IBM provides this Separately Licensed Code to Licensee WITHOUT WARRANTIES OF ANY KIND;

b. IBM DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SEPARATELY LICENSED CODE;

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d. IBM is not liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages including, but not limited to, lost data, lost savings, and lost profits, with respect to the Separately Licensed Code.

Notwithstanding these exclusions, in Germany and Austria, IBM's warranty and liability for the Separately Licensed Code is governed only by the respective terms applicable for Germany and Austria in IBM license agreements.

Note: IBM may provide limited support for some Separately Licensed Code. If such support is available, the details and any additional terms related to such support will be set forth in the License Information document.

The following are Separately Licensed Code:

- Microsoft
- HP
- Creative Commons
9. Non-IBM Machines

A non-IBM machine is device, including its features, upgrades, and accessories that IBM provides to Client. Such non-IBM machines are not branded by IBM, but branded by another party.

When IBM accepts Client's order, IBM transfers title to non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure.

Client may only acquire non-IBM machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

9.1 Indemnification and Liability

IBM has no responsibility for claims based, in whole or part, on non-IBM machines, items not provided by IBM, or any violation of law or third party rights caused by Client's materials, designs, or specifications.

Each party accepts the terms of this Service Description by signing it below where required by law, (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, any reproduction of this Service Description made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original.

Agreed to: Agreed to:

Client Company Name: IBM Company:

By____________________________________ By____________________________________
Authorized signature Authorized signature

Title: Title:

Name (type or print): Name (type or print):

Date: Date:

Client number: Agreement number:

Enterprise number:

Client address: IBM address: