Client Relationship Agreement (MODIFIED)

This Agreement is made and entered into this _____8th_____ day of ___October___, 2019 , by and between the County of Fresno, a political subdivision of the state of California ("Client" or "COUNTY") and International Business Machines Corporation, a New York corporation, whose address is New Orchard Road, Armonk, New York 10504 ("CONTRACTOR" or "IBM"). This Client Relationship Agreement (CRA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this CRA (together, the "Agreement") under which Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products). TDs detail the specifics of transactions, such as charges and a description of and information about the Product. Examples of TDs include statements of work, service descriptions, ordering documents, supplements, and invoices. Attachments provide supplemental terms that apply to certain types of Products, such as product capacity or trial services. In the event of a conflict, an Attachment prevails over this CRA, and a TD prevails over both the CRA and any Attachment, and will only apply to the specific transaction. The term of this CRA shall be for a period of three (3) years, retroactive to July 16, 2019 through and including July 15, 2022. This Agreement may be extended for up to two (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first day of the next twelve (12) month extension period (the "Agreement Term"). The Director of Internal Services/Chief Information Officer or his or her designee is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR's satisfactory performance.

1. Programs

a. A Program is an IBM-branded computer program and related material available for license, subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Client is granted a nonexclusive license to: i) use the Program only up to its authorizations and subject to its LI; ii) make and install copies to support such authorized use; and iii) 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 in the LI.

b. The license granted for a Program is subject to Client:

(1) reproducing copyright notices and other markings;

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

(3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and

(4) not using any of the elements of the Program or related licensed material separately from the Program.

c. 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 and terms as set forth in Attachments and TDs.

2. Services - Cloud Services

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

b. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD.

c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. A Cloud Service may require the use of enabling software that Client downloads to Client systems to facilitate use of the Cloud Service. Client may use enabling software only in connection with use of the Cloud Service and according to any licensing terms if specified in a TD. Enabling software is provided as-is, without warranties of any kind.

d. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates.

e. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. In addition, Client may not use Cloud Services if failure of the Cloud Service could lead to death, bodily injury, or property or environmental damage. Client may not: i) reverse engineer any portion of the Cloud Services; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine Cloud Services with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed.

f. A Cloud Service or feature of a Cloud Service is considered "Preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality (such as beta, trial, no-charge, or preview designated Cloud Services). Preview services are excluded from available service level agreements. A Preview service may not be covered by support and IBM may change or discontinue a Preview service at any time and without notice. IBM is not obligated to release a Preview service or make an equivalent service generally available.

2.1 Changes to Cloud Services

a. IBM may modify: i) a Cloud Service; and ii) the IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP) from time to time at IBM's sole discretion and such modifications will supersede prior versions. Updates to a TD (such as a service description or statement of work) will take effect upon a new order, change effective date for ongoing services, or upon the renewal date for Cloud Services that automatically renew. The intent of any modification will be to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or functionality of a Cloud Service.

b. IBM may withdraw a Cloud Service on twelve (12) months' notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term, or work with Client to migrate to another IBM offering.

2.2 Term and Termination of Cloud Services

a. The term of a Cloud Service begins on the date IBM notifies Client that Client can access the Cloud Service. IBM will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis, or terminates at the end of the term. For automatic renewal, unless Client provides written notice to IBM or the IBM Business Partner involved in the Cloud Service not to renew at least thirty (30) days prior to the term expiration date, the Cloud Service will automatically renew for the specified term. For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides thirty (30) days written notice to IBM or the IBM Business Partner involved in the Cloud Service of termination. The Cloud Service will remain available to the end of the calendar month after such thirty (30) day period.

b. IBM may suspend or limit, to the extent necessary, Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, violation of law, or breach of the terms set forth in section 2 (e). If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

c. Client may terminate a Cloud Service on one (1) month's notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; ii) if IBM's modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a modification that has a material adverse effect on Client's use of the Cloud Service, provided that IBM will have ninety (90) days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client's Content to an alternative technology for an additional charge and under separately agreed terms.

3. Services – Other Services

a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work, and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

b. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least ninety (90) days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

4. Machines and Appliances

a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

b.   When IBM accepts Client's order, IBM transfers title to Machines and 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 ten (10) business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six (6) months after shipment. Client must follow instructions provided to install Client set up Machines.

c.   Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired, and not for resale, lease, or transfer. Lease-back financing is permitted.

4.1   Machine Code and Built in Capacity

a.   Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. Client is granted a nonexclusive license to use MC only: i) on the Machine for which IBM provided it; and ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

5. 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 the Cloud Service or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services, such as consulting, maintenance, or Program support. Providing Content or otherwise using Cloud Services will not affect Client's ownership or license rights in such Content. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Cloud Services or other Services. IBM will treat all Content as confidential by not disclosing Content except to IBM employees and contractors and only to the extent necessary to deliver the Cloud Services or perform other Services.

b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, its affiliates, and contractors of either to use, provide, store and otherwise process Content in the Cloud Services or other Services. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated data in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for Cloud Services or other Services, Client will not input, provide. or allow access to such Content, unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

c. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available Cloud Service offerings. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content and to take necessary actions to order, enable, or use available data protection features for a Cloud Service appropriate for the Content being used with a Cloud Service. By using the Cloud Service, Client accepts responsibility for use of the Cloud Services, and acknowledges that it meets Client's requirements and processing instructions to enable compliance with applicable laws.

d. IBM's Data Processing Addendum at http://ibm.com/dpa (DPA) and applicable DPA Exhibit(s) apply and prevail over any conflicting terms 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.

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

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

6. **Warranties and Post Warranty Support**

   a. IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one (1) year, or the initial license term if less than one (1) 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.

   b. IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

   c. IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

   d. If a Machine or 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 (12) months' charges) and Client's license or right to use it terminates.

   e. 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 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, or failure to comply with instructions provided by IBM. Preview services and non-IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

7. **Charges, Taxes, Payment and Verification**

   a. Client agrees to pay all applicable charges specified for an IBM Product or non-IBM Product, and charges for use in excess of authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within forty-five (45) days of the invoice date to an account specified by IBM, and late payment fees may apply, which fees will not exceed a monthly amount of two percent (2%). Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

   b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

   c. For Cloud Services, 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. One-time charges will be billed upon IBM's acceptance of an order.

   d. IBM may change recurring charges, labor rates and minimum commitments on three (3) months' notice, except for Cloud Services, which IBM may change charges on thirty (30) days' notice, unless otherwise committed to pricing during the term of the Cloud Service or as specified in a TD. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if: i) IBM receives the order before the announcement date of the increase; and ii) within three (3) months after IBM's receipt of the order, the product is shipped or made available to Client.

   e. 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 MC and Program licenses and metrics, such as sub-capacity usage; and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) 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 (2) years thereafter.

f.   COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive compensation as specified in each Transaction Document. CONTRACTOR will invoice, via either electronically or via mail, in triplicate to the County of Fresno, Internal Services Department, Attention: Business Office, 333 W. Pontiac Way, Clovis, CA 93612, (isdbusinessoffice@fresnocountyca.gov).

In no event shall the total value of all IBM Products procured and performed under any Transaction Documents under this Agreement exceed five million dollars ($5,000,000.00) during the term of this Agreement. Unless specified otherwise in the TD, it is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

8. Liability and Indemnity

a.   IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to twelve (12) months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.

b.   The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

c.   If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly: i) notifies IBM in writing of the claim; ii) supplies information requested by IBM; and iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

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

9. Termination

a.   Either party may terminate this CRA: i) without cause on at least one (1) month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this CRA does not terminate TDs, and provisions of this CRA and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license. Failure to pay is a material breach.

10. Governing Laws and Geographic Scope

a.   Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

b.   Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California. I Both parties agree to the application of the laws of the State of California to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of the Cloud Service from a country outside Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

11. General

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

b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this CRA may apply to many future orders, IBM may modify this CRA by providing Client at least three (3)

months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties.

c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. IBM is an information technology provider only. Any directions, suggested usage, or guidance provided by the IBM or an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Client is responsible for its use of IBM Products and Non-IBM Products. Each party is responsible for determining the assignment of its and its affiliates personnel and their respective contractors, and for their direction, control, and compensation.

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

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

f. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third party terms presented to the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such Non-IBM Products. Access to Non-IBM Cloud Services or other Services may be withdrawn at any time.

g. IBM, its affiliates, and contractors of either, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel, and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of IBM Products and Non-IBM Products. The IBM Privacy Statement at https://www.ibm.com/privacy/us/en/ provides additional details with respect to BCI and Account Data described below.

h. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's acquisition or use of IBM Products or Non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM, its affiliates, and contractors of either, may use Account Data, for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products.

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

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

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

l. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two (2) years after the cause of action arose. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

m. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of IBM Products and Non-IBM Products. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed is described in the TD or as specified in service support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.

Agreed to:
Client Company Name:
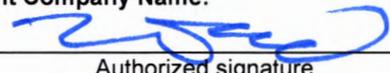
By _____
　　　　　　Authorized signature

Title: Chairman of the Board of Supervisors of the County of Fresno

Name (type or print): Nathan Magsig

Date:

Client number: 2254550

Enterprise number: 3554600

Client address: 333 W. Pontiac Way, Clovis, CA 93612

Agreed to:
International Business Machines Corporation
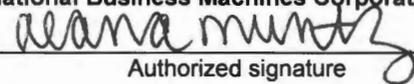
By _____
　　　　　　Authorized signature

Title: Client Executive

Name (type or print): Alana Muntz

Date: 11 September 2019

Agreement number:

A-19-521

IBM address:
1600 Anton Blvd
Costa Mesa, CA 92626

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California
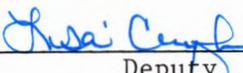
By: _____
　　　　　　Deputy

FOR ACCOUNTING USE ONLY:
Fund: 1020
Subclass: 10000
ORG: 8905
Account: 7205/7311

County of Fresno

Addendum One to Client Relationship Agreement

THIS ADDENDUM to the IBM CLIENT RELATIOINSHIP AGREEMENT (the "Agreement") by and between the County of Fresno (the "COUNTY") and International Business Machines Corporation (the "CONTRACTOR"), shall be effective upon execution of the Agreement to which this addendum is attached and made a part thereof. The following terms and conditions shall be incorporated and made a part of the above-identified Agreement and to the extent of any conflict therewith, the provisions contained in this Addendum shall supersede and control the subject matter hereof.

1.   **TERMINATION**

Non-Allocation of Funds - The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or the affected Statement of Work terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

Contractor shall be compensated for all Services performed up to the date of termination.

2.   **COMPENSATION/INVOICING**

In no event shall the total value of all hardware, software licenses, hardware or software maintenance or Services procured and performed under any Transaction Documents under this Agreement be in excess of three million dollars ($3,000,000) during the initial three-year term of this Agreement. If this Agreement is extended for an additional Year 4, in no event shall compensation for the four-year term exceed $four million dollars ($4,000,000). If this Agreement is extended for an additional Year 5, in no event shall compensation for the total possible five-year term exceed five million dollars ($5,000,000). It is understood that all expenses incidental to CONTRACTOR'S provision of hardware, software licenses, hardware or software maintenance or performance of Services under this Agreement shall be borne by CONTRACTOR, unless specifically provided for in a Transaction Document.

4.   **INSURANCE**

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance throughout the term of the Agreement:

A.   Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars ($2,000,000) per occurrence and an annual aggregate of Four Million Dollars ($4,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, or any other liability insurance deemed necessary because of the nature of this contract.

B.   Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than One Million Dollars ($1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C.   Technology Professional Liability (Errors and Omissions)

Technology Professional Liability (Errors and Omissions) Insurance appropriate to CONTRACTOR's profession, with limits not less than Two Million Dollars ($2,000,000) per occurrence or claim, Two Million Dollars ($2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this Agreement and may include, but not be limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy may provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

E.   Professional Liability/ /Errors & Omissions

If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars ($1,000,000.00) per occurrence, Three Million Dollars ($3,000,000.00) annual aggregate.

F.   Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents, and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein, only with respect to liability arising out of this Agreement. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement, CONTRACTOR shall provide certificates of insurance as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Internal Services Department, Attention: Director of Internal Services/Chief Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that such insurance coverage have been obtained and are in full force; that the County

of Fresno, its officers, agents, and employees will not be responsible for any premiums on the policies; that for such worker's compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein only with respect to liability arising out of this Agreement. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A- FSC VII or better.

5.   **AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during business hours, and with advance written notice, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars ($10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

Notwithstanding anything herein to the contrary, in no event shall CONTRACTOR be required to disclose to COUNTY or its auditors any confidential or proprietary information, including any cost or pricing methodologies or data, personnel records or internal audit results.