International Business Machines Corporation ("IBM"), MidAmerican Energy Holdings Company ("MEHC") and its affiliates who elect to utilize this Transaction Document (as defined below) and agree to be bound by the terms and conditions, and applicable exhibits and appendices set forth herein by executing an Affiliate Addendum (as defined below) (each, a "Participating Affiliate" and each of MEHC and each Participating Affiliate as to its individual participation hereunder, "you" or "Customer") enter into this IBM International Passport Advantage Agreement Transaction Document (this "Transaction Document") as of July 2, 2013 ("Transaction Document Start Date") to the IBM International Passport Advantage Agreement that is referenced below ("IPAA"). This Transaction Document will remain in effect through the third anniversary date of the first day of the Subscription Period (as defined in Section 2 below) ("Transaction Document End Date"). Affiliates have until one week after the Transaction Start Date to become a Participating Affiliate under this Transaction Document by signing the Affiliate Addendum. If all Participating Affiliates listed in Table 2 have not signed an Affiliate Addendum by one week after the Transaction Start Date, IBM reserves the right to modify the Subscription Fees set forth in Table 2 below by redistributing the amounts for the affiliates that have not signed an Affiliate Addendum between the Participating Affiliates on a percentage basis and all Participating Affiliates will be deemed to have accepted such revised pricing without further signatures or modification to this Transaction Document.

This Transaction Document allows Customer and the Participating Affiliates to receive from IBM the benefit of the IBM SaaS (as defined below) for the Subscription Entitlements listed in Section 2 below for the price set forth Section 3 "Subscription Fee" below. The IBM SaaS offerings that Customer is subscribing to are described in Section 2 below and in the Terms of Use as shown in Exhibit 2 ("ToU") and IBM shall perform the obligations set forth therein. In addition, IBM and Customer shall comply with the terms and conditions set forth in Exhibit 3 ("Additional Terms").

Notwithstanding anything to the contrary set forth herein, PacifiCorp shall continue to receive IBM SaaS services pursuant to the terms and conditions set forth in the existing Professional Services Contract between PacifiCorp and IBM (as successor to Rivermine Software, Inc.) until the Provision Date. On and after the Provision Date, PacifiCorp shall continue to receive IBM SaaS services pursuant to the terms and conditions set forth in this Transaction Document as a Participating Affiliate. As of such date, with respect to PacifiCorp's participation, this Transaction Document shall supersede the Professional Services Contract in its entirety which shall be deemed terminated.

Any capitalized but undefined terms contained in this Transaction Document shall have the meaning set forth in the IPAA or the ToU.

The IPAA is the International Passport Advantage Agreement, Agreement Number 181157 (IBM Form Z125-5831-07 7/2011), incorporated by reference herein.

1. IBM SaaS

The "IBM SaaS" shall mean those IBM SaaS Products listed on Table 1 of this Transaction Document. You may deploy the IBM SaaS, as permitted, up to the maximum level of use authorizations (quantities) specified on Table 1.

For the purpose of this Transaction Document, MEHC and the Participating Affiliates listed on Table 2 during the term of the Transaction Document are each entitled to submit Purchase Orders or equivalent order letters or order forms to obtain IBM SaaS for the payments as shown on Table 2 of this Transaction Document for the corresponding quantity . MEHC and Participating Affiliates may transfer the Subscription Entitlements between one another or to other MEHC affiliates (provided such affiliates become Participating Affiliates by executing an Affiliate Addendum, provided that the total quantity of Subscription Entitlements used by MEHC and the

Participating Affiliates in the aggregate do not exceed the aggregate Subscription Entitlement quantities authorized pursuant to this Transaction Document and Table 1 (as it may be amended from time to time). Each MEHC affiliates participating under this Transaction Document shall execute and deliver to IBM a signed affiliate transaction document in the form of Exhibit 1 ("Affiliate Addendum").

Notwithstanding anything to the contrary set forth in the IPAA, it is understood and agreed that MEHC and each Participating Affiliate is solely responsible and liable for its obligations related to the Subscription Entitlements allocated to it. Neither MEHC nor any other MEHC affiliate(s) shall have any obligation or liability, contractually or otherwise, for payment or other obligation incurred by or allocable to any other affiliated entity participating hereunder.

Upon execution and delivery by the parties of this Transaction Document and each Affiliate Addendum, IBM shall be deemed to have entered into separate contractual relationships with each of MEHC and each Participating Affiliate which shall be governed by the terms and conditions set forth herein.

2. Subscription Entitlements

Subscription Entitlements mean those Part Numbers listed on Table 1 below. You may access the Subscription Entitlements, made available to you pursuant to the IPAA and the applicable ToU(s) which govern the use of such IBM SaaS, up to the maximum level of use authorizations (quantities) specified herein (as such maximum level of use may be increased by subsequent orders placed by Customer).

IBM notifies you when access has been provided to you for the IBM SaaS listed on Table 1 subscribed to by you ("Provision Date"). The Subscription Period begins on the first day of the first full month following the Provision Date unless the Provision Date is the first day of the month. In that case the Subscription Period begins on the Provision Date. The Partial Month is the number of days in the period between the Provision Date and the start date of the first month of the Subscription Period during which you have access to the Subscription Entitlement. The Partial Month Subscription Charges listed on Table 3 of this Transaction Document are not included in the Option Charges. In no event shall a Customer's Provision Date occur prior to completion of any applicable implementation services in accordance with the completion criteria set forth in a separate statement of work between the Customer and IBM.

Customer's Subscription Period continues for thirty six (36) consecutive month periods ("Subscription Period End Date") following the first day of the first full month following the Provision Date and is subject to renewal as provided herein. (The Subscription Period for all of the Participating Affiliates shall be co-terminous.)

Notwithstanding the terms of this Transaction Document or our prior practice, payment for the Partial Month Subscription and Overage ("Additional SaaS Fees") on Table 3 are not contingent upon issuance of a purchase order. All approvals required to issue payment for Additional SaaS Fees Partial Month Subscription have been obtained by you. Payment in full for Additional SaaS Fees Partial Month Subscription is due upon receipt of invoice. The bill to and ship to addresses, along with specific ordering information and amounts due for Additional SaaS Fees Partial Month Subscription under this Transaction Document, are included herein or in other documents related hereto. Any order for Additional SaaS Fees Partial Month Subscription is firm and irrevocable upon the determination of such charges by IBM.

TABLE 1

Participating Affiliate	Part Number	Description	Quantity

Participating Affiliate	Part Number	Description	Quantity
7013340 (MEC)	D0S2BLL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on document per Month	200
7013340 (MEC)	D0S2ELL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Million Spend Conversion Units per Annum	4
7517957 (NNG)	D0S2BLL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on document per Month	300
7517957 (NNG)	D0S2ELL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Million Spend Conversion Units per Annum	3
3233535 (MEHC)	D0S2BLL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on document per Month	100
3233535 (MEHC)	D0S2ELL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Million Spend Conversion Units per Annum	1
7020497 (Pac)	D0S2BLL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on document per Month	200
7020497 (Pac)	D0S2ELL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Million Spend Conversion Units per Annum	8
7404664 (Kern)	D0S2BLL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on document per Month	200
7404664 (Kern)	D0S2ELL	IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Million Spend Conversion Units per Annum	1

"Subscription" is the IBM SaaS provided for a Subscription Period exclusive of any daily fees, overages, set up , on demand or remotely delivered services.

"Subscription Period" is the length of time you will have access to the IBM SaaS Subscription, excluding the Initial Partial Month.

3. **Subscription Fee**
During the initial Subscription Period, the aggregated Subscription Fee for the Subscription Entitlements set forth in Section 1 above is $704,052.00 as shown in Attachment 1 below and as further described on Table 2 below. The Subscription Fee includes support through the Subscription Period End Date for the Subscription Entitlements.

TABLE 2

Participating Affiliate	Address	Amount for 36 Month Subscription Period
7013340	MidAmerican Energy 4299 NW Urbandale Drive	$152,318.12

	Urbandale, IA 50322	
7517957	Northern Natural Gas 1111 S. 103rd Street . Omaha, NE 68124	$170,938.59
3233535	MidAmerican Energy Holdings Company 4299 NW Urbandale Drive Urbandale, IA 50322	$56,979.53
7020497	Pacificorp 825 NE Multnomah St. Ste. 800 Portland, OR 97232	$229,036.24
7404664	Kern River Gas Transmission 2755 East Cottonwood Parkway Ste. 300 Salt Lake City, UT 84121	$94,779.53

Customer's Subscription Fee shall be divided into 36 equal payments and invoiced to Customer monthly. Undisputed charges are due upon receipt of invoice and payable within thirty (30) days thereof. The parties shall act in good faith to promptly resolve any payment disputes in accordance with the dispute resolution provisions set forth herein.

The Subscription Fee is exclusive of any applicable duties, fees and taxes. You are responsible for any such duties, fees and taxes including, but not limited to, withholding taxes and, if as a result of your accessing or using a Subscription Entitlements across a border, any customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Subscription Entitlements).

TABLE 3

Additional SaaS Fees				
PART NUMBER	DESCRIPTION	UNIT PRICE	TERM	BILLING FREQUENCY
D0S2CLL	IBM EMPTORIS RIVERMINE TELECOM EXPENSE MANAGEMENT ON CLOUD STANDARD EDITION PAPER INVOICES ADD-ON DOCUMENT OVERAGE	$ 11.55 ADD-ON DOCUMENT MONTHLY	36 MONTHS	MONTHLY
D0S2DLL	IBM EMPTORIS RIVERMINE TELECOM EXPENSE MANAGEMENT ON CLOUD STANDARD EDITION MILLION SPEND CONVERSION UNITS OVERAGE	$2,655.00 PER USE MONTHLY	36 MONTHS	MONTHLY
D0S2ALL	IBM EMPTORIS RIVERMINE TELECOM EXPENSE MANAGEMENT ON CLOUD STANDARD EDITION PAPER INVOICES ADD-ON DAILY FEE FOR PARTIAL MONTH	$350.00 PER USE DAILY	36 MONTHS	MONTHLY
D0S2FLL	IBM EMPTORIS RIVERMINE TELECOM EXPENSE MANAGEMENT ON CLOUD STANDARD EDITION DAILY FEE	$301.90 PER USE DAILY	36 MONTHS	MONTHLY

FOR PARTIAL MONTH

"Daily Fee" is the charge for the IBM SaaS Subscription for each day of the Initial Partial Month.

"Overage" is the use of the IBM SaaS Subscription in excess of the Quantity listed on Table 1 above.

If the Subscription Period of the IBM SaaS Subscription extends beyond the Transaction Document End Date, the terms and conditions of the Transaction Document which are applicable to the IBM SaaS Subscription Entitlements remain in effect until the Subscription Period End Date of the IBM SaaS and apply to respective successors and assignees.

This Transaction Document is confidential and each party agrees not to disclose the terms of this Transaction Document to any third party (excluding its respective Affiliates) without the other party's prior written consent, except as required by law.

Once signed, unless prohibited by local law or specified otherwise, any reproduction of this Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original.

By signing below, each of us agrees to the terms of this Transaction Document.

Agreed to:	*Agreed to:*
MidAmerican Energy Holdings Company	**International Business Machines Corporation**
By: _____	**By:** _____
Name: Maureen E. Sammon	**Name:** Harry K. Ching
	(type or print)
Title: SVP& Chief Administrative Officer	**Title:** Business Unit Executive
Date: 7/2/13	**Date:** 7/2/2013
4299 NW Urbandale Dr.	4000 Executive Pkwy
Urbandale, IA 50322	San Ramon, CA 94583
Customer Contact Name: [Insert Name]	Marc A. Schwartz

After signing, please return this Transaction Document to the IBM address shown above.

Exhibit 1

Affiliate Addendum

Affiliate transaction document for IBM International Passport Advantage Transaction Document between MidAmerican Energy Holdings Company and IBM

Affiliate Name] ("Affiliate") acknowledges that all purchases by it will be governed under the terms of the IBM International Passport Advantage Agreement Transaction Document (MidAmerican Energy Holdings Company -SaaS IPAA TD-20130430), which was agreed to and signed by International Business Machines and MidAmerican Energy Holdings Company ("MEHC") July 2, 2013 ("Transaction Document"). Affiliate further acknowledges and agrees that it shall be bound by the terms of any amendments to the Transaction Document that may be made after the date hereof pursuant to any written agreement between IBM and Affiliate or between IBM and MEHC. Affiliate hereby waives notice of any such subsequent written agreement between IBM and MEHC.

Agreed to:
[Affiliate Name]

Agreed to:
International Business Machines Corporation

By: _____
          (Authorized signature)

By: _____
          (Authorized signature)

Title: _____

Title: _____

Name: _____
               (print)

Name: _____
               (print)

Date: _____

Date: _____

Your address:

Your IBM customer number:
Enterprise number: 5816142
IPAA Number: 181157
Passport Advantage Site number:
Ship to address: Same as above
Bill to address: 1177 S. Belt Line Road
                        Coppell, TX 75019

Exhibit 2

Terms of Use

IBM Terms of Use

IBM Emptoris Rivermine Telecom Expense Management on Cloud

The terms of this IBM Terms of Use are in addition to those of the IPAA. Carefully read this ToU before using the IBM SaaS and any associated Enabling Software.

Part 1 – General Terms

1. Purpose

This ToU is for the following IBM SaaS:

● IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition

● IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on

For the purpose of this ToU only, the term "IBM SaaS" refers to the specific IBM SaaS offering set forth in this Section 1.

Customer may use the IBM SaaS only during a valid Subscription Period.

2. Definitions

Capitalized terms not defined in this ToU are defined in the IPAA or the Transaction Document, as applicable. For purposes of these ToU, the term "Program" includes the term "program" each as may be used in the IPAA.

Enabling Software – any Program and associated materials provided to Customer by IBM or a third party as part of the IBM SaaS offering in order to facilitate access to and use of IBM SaaS.

Privacy Practice – the Privacy Practice, located on the Internet at http://www.ibm.com/privacy, and any subsequent modification.

3. General Charge Terms

3.1 Metrics

Million Spend Conversion Units (MSCUs) are a unit of measure by which the IBM SaaS can be obtained. A Spend Conversion Unit is a currency-independent measure of a Spend amount relevant to the licensing of the IBM SaaS. Currency-specific Spend amounts must be converted into MSCUs in accordance with the table located at http://www.ibm.com/software/licensing/conversion_unit_table. Sufficient entitlements must be obtained for the number of MSCUs required to cover the amount of Spend processed or managed by the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.

For the purpose of Million Spend Conversion Unit entitlements of IBM Emptoris Telecom Expense Management SaaS, Spend is the total amount disbursed on communications vendors for landline, mobile and data services to be processed or managed by the IBM SaaS. This includes both electronic and paper invoices across all telecommunications carriers and geographies targeted for this service.

Document is a unit of measure by which the IBM SaaS can be obtained. A Document is defined as a finite volume of data that is enveloped within a document header and trailer record that marks its beginning and end or any , physical or electronic document type defined in the IBM SaaS, including but not limited to: invoices, sales orders, purchase orders, quotes, schedules, plans, returns, shipments, and receipts. Sufficient entitlements must be obtained to cover the total number of Documents processed by the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.

3.2   Charges & Billing

3.2.1   Billing Options

The amount payable for IBM SaaS is specified in a Transaction Document as follows:

The subscription fee is billable on an annual, quarterly, or monthly basis for the length of the term as specified in the Transaction Document. The amount payable per billing cycle will be based on the subscription fee plus any overage charges.

3.2.2   Partial Month Charges

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by IBM that their access to the IBM SaaS is available.

3.2.3   Overage Charges

The IBM SaaS will monitor the amount of Million Spend Conversion Units or Documents processed. If the amount of Million Spend Conversion Units and/or Documents specified in Customer's PoE or Transaction Document is exceeded, overage charges will apply at the rate specified in the Transaction Document.

3.2.4   On Demand

On-Demand options will be invoiced in the month the on-demand option is made available to the Customer and will be invoiced as set forth in the Transaction Document.

4.   Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM may provide the IBM SaaS User with an Account identification and password. Customer is responsible for ensuring that each IBM SaaS User manages and keeps their Account information current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

Customer is responsible for ensuring that each IBM SaaS User protects their Account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS on Customer's behalf.

5.   Suspension of IBM SaaS and Termination

5.1   Suspension

In the event of a breach of the Terms of Use, the IPAA, or the Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the offending IBM SaaS User's Content, at any time. IBM will notify Customer of any suspension or revocation action.

5.2   Termination

IBM may terminate Customer's access to IBM SaaS for cause if Customer does not comply with the terms of the IPAA, the Acceptable Use Policy or this ToU and such noncompliance is not remedied within a reasonable time after receiving written notice from IBM. Upon termination, Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within Customer's possession or control.

6. Renewal of a Subscription Period

6.1 [INTENTIONALLY LEFT BLANK]

6.2 Customer Renewal Required

The IBM SaaS offering will not automatically renew at the end of the initial Subscription Period. In order to continue use of the IBM SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the IBM SaaS.

7. Emergency Maintenance & Scheduled Maintenance

IBM may perform regularly scheduled maintenance during maintenance windows which occur outside of normal business hours (i.e., Monday – Friday, 8 am to 5 pm Pacific time).

IBM SaaS will not be available during these times.

IBM shall provide the IBM SaaS and related services set forth herein in accordance with the service levels set forth in Appendix B to this ToU.

8. Updates; Applicable Terms and Authorization for Auto Updates

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates. Customer authorizes IBM to, and agrees that IBM may, in accordance with IBM's standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to IBM SaaS without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates except to the extent necessary in order for the IBM SaaS to perform substantially in accordance with the applicable documentation and specifications.

9. Updates to Terms of Use

IBM reserves the right to prospectively modify these Terms of Use, to account for any Updates that IBM may provide or make available for the IBM SaaS during the Subscription Period and as otherwise required by applicable law, by providing at least thirty (30) days prior notice of such modified terms to Customer; provided that in no event shall any modifications for any Updates diminish Customer's rights or IBM's obligations hereunder without the written consent of MEHC or Customer, as applicable, except as otherwise required by applicable law.

10. Technical Support

Technical support is provided for the IBM SaaS offering during the Subscription Period. Such technical support is included with the IBM SaaS and is not available as a separate offering.

E-mail and telephone-based help desk support is available to Customer from 8am to 8pm Eastern Time, Monday to Friday. PacifiCorp agrees to send all non-urgent questions and issues to the e-mail help desk and all urgent questions to the telephone or e-mail-based help desk.

Technical Support information can be found and issues can be submitted by email at the following URL:

https://support.rivermine.com/jira/secure/Dashboard.jspa_

IBM may change the URL upon notice to Customer.

E-mail and phone support access is also described at the technical support web site.

11. Data Privacy and Data Security

11.1 Customer's Obligations

In relation to all Personal Data provided by or through Customer to IBM, Customer will be responsible as the sole data controller for complying with all applicable data protection or similar laws such as, but not limited to, EU Directive 95/46/EC (and laws implementing that Directive) that regulate the processing of

Personal Data including special categories of data, as such terms are defined in that Directive (and laws implementing that Directive).

Customer agrees to obtain all legally required consents, authorizations and approvals and make all necessary disclosures before (i) including any Personal Data in Content and (ii) using the Enabling Software and IBM SaaS.

Customer confirms and acknowledges that it is solely responsible for any Personal Data that may be contained in Content, including any information which any IBM SaaS User shares with third parties onCustomer's behalf. Customer is solely responsible for determining the purposes and means of processing any Personal Data by IBM under these Terms of Use, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws.

IBM SaaS is not intended for the storage or receipt of any Sensitive Personal Information or Protected Health Information (as defined below), in any form, and Customer will be responsible for reasonable costs and other amounts IBM may incur relating to any such information provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims. "Sensitive Personal Information" is: 1) Personal Data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to financial information, country identification number (e.g. Social Insurance Number (SIN), Social Security Number (SSN)) or other governmentally issued identification number such as driver's license or passport number, bank account number, credit card or debit card number; and 2) Personal Data relating to racial or ethnic origin, sexual orientation, or political opinions or religious, ideological or philosophical beliefs or activities or trade union membership. "Protected Health Information" is "individually identifiable health information" as defined under the Health Information Portability and Accountability Act of 1996 ("HIPAA"), as amended.

Customer agrees that when IBM reasonably determines it to be useful in its provision of IBM SaaS, IBM may transfer Content, including any Personal Data, across a country border to the entities and countries notified to Customer. Customer consents to IBM SaaS being provided by such entities in such countries, and is solely responsible for determining that any transfer of any Personal Data across a country border under the terms of the Terms of Use complies with applicable data protection laws. IBM shall reasonably cooperate with Customer, for Customer's own benefit or for the benefit of a Customer data controller, in its fulfillment of any legal requirement, including obtaining mandatory approvals.

If IBM makes a change to the way it processes or secures Personal Data as part of IBM SaaS and the change causes Customer to be noncompliant with data protection laws applicable to it, Customer may terminate the current Subscription Period for the affected IBM SaaS, by providing written notice to IBM within thirty (30) days of IBM's notification of the change to Customer. Any such termination will not obligate IBM to issue a refund or credit to Customer.

11.2   IBM's Obligations

IBM will only process Personal Data in a manner that is reasonably necessary to provide IBM SaaS, and only for that purpose.

IBM will only process Personal Data in delivering IBM SaaS as described by IBM, and Customer agrees that the description provided by IBM is consistent with Customer's processing instructions.

Upon Customer's written request, following termination or expiry of either this ToU or the IPAA, IBM will destroy or return to Customer all Content that Customer identifies as Personal Data.

If Customer or a Customer data controller is required by applicable data protection laws to provide information about or access to Personal Data to any individual or to a relevant authority, IBM will reasonably cooperate with Customer in providing such information or access.

11.3   Protection of Content

Notwithstanding anything to the contrary in the IPAA or the Transaction Document.

a.   IBM will not intentionally disclose or use Customer's Content except to operate and perform the IBM SaaS as contemplated in this ToU, subject to IBM's compliance with applicable laws.

b.   IBM will only process Customer Content on systems used to host and operate the IBM SaaS, on which IBM has implemented the security practices and procedures referenced below.

11.4   Security Practices

IBM implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS. These practices and procedures are designed to

reduce the vulnerability of our systems to accidental loss, unlawful intrusions, unauthorized access, disclosure or alteration, or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the IBM SaaS. A description of the practices and procedures applicable to the IBM SaaS, including applicable technical and operational measures, is available to Customer upon request ("Security Practices"). Customer is responsible for determining whether these practices and procedures are appropriate to meet Customer's requirements. Except as specifically provided in the Security Practices for the IBM SaaS or otherwise in the Transaction Document, IBM makes no representations or warranties regarding any security functions. In the event of a conflict between the description in the Security Practices and the Transaction Document, the terms of the Transaction Document will control.

12. Compliance with Applicable Export Law

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Customer acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS. Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

13. Indemnity

Customer agrees to indemnify, defend and hold IBM harmless against any third party claim arising out of or relating to: 1) violation of the Acceptable Use policy by Customer or any IBM SaaS User; or 2) Content created within IBM SaaS or provided, uploaded, or transferred to IBM SaaS by Customer or any IBM SaaS User.

14. Copyright Infringement

It is IBM's policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please visit the Digital Millennium Copyright Act Notices Page at http://www.ibm.com/legal/us/en/dmca.html.

15. Warranty and Exclusions

15.1 Limited Warranty

IBM warrants that IBM SaaS will conform to its specifications, as contained in Appendix A to this Terms of Use. Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

If the IBM SaaS does not function as warranted, and IBM is unable to make it do so, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect during the Subscription Period for the IBM SaaS offering.

Items Not Covered by Warranty

IBM does not warrant uninterrupted, secure, or error-free operation of IBM SaaS or that IBM will able to prevent third party disruptions of IBM SaaS or that IBM will correct all defects.

Except to the extent any results are the responsibility of IBM as provided in Appendix A, Customer is responsible for the results obtained from the use of the IBM SaaS.

16. IBM SaaS Offering Unique Terms

The following are the unique terms associated with the identified IBM SaaS. The unique terms include a brief summary of the IBM SaaS, IBM responsibilities and Customer responsibilities that are unique to the offering.

16.1 IBM SaaS General Details

● IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition

16.1.1 Invoice Acquisition and Loading

IBM is responsible for the acquisition and monitoring of Customer invoices and will work directly with service providers to ensure timely delivery and receipt.

IBM Responsibilities:

- Receive manual and electronic invoices directly from vendor and load into IBM SaaS, as documented on the BAN list, including definition of invoice interval (default is monthly)
  - Electronic invoices will be loaded with circuit and sub-line item detail when the telecom carrier provides such detail within their bill format. Electronic invoices will be loaded within 5 business days of receipt from the carrier.
  - Manual invoices will be loaded as a minimum at the circuit line item level. This is necessary for circuit level allocations. Majority of the smaller carriers have a 20 day or less due date term. Thus, IBM will load manual invoices within three (3) business days of receipt
- Identify bill format discrepancies for joint research with Customer and service providers
  - IBM is responsible for the reconfiguration of feeds caused by changes made by the telecom carrier supplying the electronic feed provided from the carrier is a standard and supported electronic format.
- Provide monthly invoice load status reports, including loaded and missing invoices
- Contact service providers regarding missing invoices and escalate to Customer where necessary
- Perform quarterly BAN analysis to assess opportunity for conversion and/or consolidation (where applicable)
  - IBM is responsible for ordering future electronic feeds from telecom carriers as new electronic formats become available. IBM will notify Customer of the invoice format change. If IBM has issues with the telecom carriers regarding a change to the billing format, IBM will notify Customer of the issue. Customer will contact the telecom carrier and notify them to work with IBM on electronic file format/feed changes.
- Reconciliation of any disconnect/termination/suspension notices against existing invoices loaded Into the IBM SaaS; Customer will be notified and forwarded a copy of the notice the same day it is received by IBM.

Customer Responsibilities:

- Provide IBM with valid Letter of Authorization (LOA) to authorize IBM personnel as authorized points of contact
- Ensure IBM has access to all invoices (electronic and manual)
- Support research and escalation efforts for bill format discrepancies identified by IBM
- Escalate and follow-up with service provider, as requested by IBM, after multiple unsuccessful attempts to obtain missing invoices is reported
- Issue requests to close accounts in a timely manner after vendor notifications to ensure unnecessary efforts are not applied tracking inactive accounts
- Maintain BAN invoice interval for input into the IBM missing invoice management process (default is Monthly)
- Resolve vendor disconnect notices upon notification by IBM

Invoice definitions are as follows:

a. Manual Invoice - Any vendor invoice that is not in a machine-readable format and cannot be processed in its native form using an IBM invoice reader. Manual formats include paper invoices, Image Files (PDF, TIF, JPG), Text or MS Word. The invoice transport method is immaterial - physical mail, email, portal or FTP

b. Electronic Invoice - Any vendor invoice that is in a machine-readable format and can be processed in its native form using an existing IBM invoice reader. Electronic invoices that cannot be processed through an existing IBM Invoice Reader are considered Manual until an agreement is reached on the development of a new Invoice Reader. Electronic formats include EDI, XML, MDB, MS Excel or CSV.

16.1.2 Electronic invoice loading options

IBM maintains a library of standard electronic invoice readers. These standard electronic invoice readers will be used to load electronic invoices. Customer agrees to use the IBM preferred invoice formats for loading invoices into the IBM SaaS.

16.2   Paper Invoices Add-on

- IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition Paper Invoices Add-on

Manual/Paper invoices are loaded at the circuit line item level. IBM will use the standard MSXLS invoice reader to load manual invoices. Each manual invoice will be scanned, uploaded into the application and attached to the invoice load. If Customer requests manual invoice processing at the circuit/inventory level, all manual invoices must be processed at the inventory level. Customer may not select specific invoices for inventory level and elect to have other invoices processed at the account summary level. Loading manual invoices at the sub-line item detail (sub-inventory) is not available.

Customer will use IBM standard charge categorization for Manual Invoices (e.g., where taxes go, where other charges and credits go, where monthly charges go). Customers requiring non-standard charge categorization will require a written change order to cover additional charges and related work. Customer may receive paper copies of invoices that are also processed electronically ("Duplicate Paper Copies"). If Customer sends Duplicate Paper copies to IBM to be processed, IBM will notify Customer to correct the issue.

16.3   IBM Emptoris Rivermine Telecom Expense Management on Cloud Standard Edition

16.3.1 Invoice Workflow and Approval

IBM SaaS offers an invoice approval workflow that follows a conditional path to route invoices for approval prior to submission to the financial system for payment.

IBM Responsibilities:

- Ensure invoice is assigned to Customer staff outlined in Customer defined workflow
- Research and resolve "Total mismatch on invoice" exceptions, if needed, prior to issuing approval for effected invoice
- Create and flag new BANs in the IBM SaaS for client research
- Identify and flag missing Circuits in the IBM SaaS for client research

Customer Responsibilities:

- Analyze, review and approve invoices
- Initiate necessary utilities to re-match, re-analyze and/or re-allocate invoices after inventory and allocations changes have occurred
- Maintain account integrity in IBM SaaS, including but not limited to making updates to the account structures, modifying vendor remit addresses or account billing addresses, assigning account level financial coding, etc.
- Utilize internal business practices to manage invoice disputes (i.e. contact the vendor as needed, resolve and follow up to ensure a credit is received)
- Utilize IBM SaaS to create inventory, and associated required attributes (i.e. cost allocations, custom attributes or related services)
- Complete financial information (GL/AP coding) within 48 hours of IBM request for Customer assistance in completing the cost allocation/invoice payment process.
- Generate supplemental reports for research and validation efforts (i.e. accrual reports)

16.5   IBM SaaS User Profile

In connection with Customer's use of the IBM SaaS, Customer acknowledges and agrees that: (i) IBM SaaS User names, titles, company names and photographs may be posted by an IBM SaaS User as part of a profile ("Profile") and that the Profile can be viewed by other IBM SaaS Users, and (ii) at any time Customer may request that an IBM SaaS User Profile be corrected or removed from the IBM SaaS and such Profile will be corrected or removed, but removal may prevent access to the IBM SaaS.

16.6   Third party Site and Services

If Customer or an IBM SaaS User transmits Content to a third party website or other service that is linked to or made accessible by the IBM SaaS, Customer and the IBM User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Customer and the third party website or service. IBM makes no warrantees or representations about such third party sites or services, and shall have no liability for such third party sites or services.

17.   General

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.

Part 2 – Country-unique Terms

The following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unmodified and in effect. This Part 2 is comprised of amendments to this Terms of Use and is organized as follows:

- Asia Pacific country amendments; and
- Europe, Middle East, and Africa country amendments.

ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

15.1. Limited Warranty

The following is added to the end of Section 15.1:

> The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

JAPAN

15.1. Limited Warranty

The following is deleted from the first paragraph of Section 15.1:

> Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

NEW ZEALAND

15.1. Limited Warranty

The following is added to this Section 15.1:

> The warranties specified in this Section are in addition to any rights Customer may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Customer requires the goods for the purposes of a business as defined in that Act.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

EUROPEAN UNION MEMBER STATES

The following is added to Section 15: Warranty and Exclusions:

> In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 15: Warranty and Exclusions.

AUSTRIA

15. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 15 Warranty and Exclusions is replaced in its entirety by the following:

15. Warranties and Exclusions

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties (*"Ausschluß der Gewährleistung"*).

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

GERMANY

15. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 15 Warranty and Exclusions is replaced in its entirety by the following:

15. Warranties and Exclusions

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties (*"Ausschluß der Gewährleistung"*).

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

IRELAND

15. Warranty and Exclusions

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

IRELAND AND UNITED KINGDOM

18. Entire Agreement

The following sentence is added at the beginning of this Section 18:

Nothing in the following paragraphs shall have the effect of excluding or limiting liability for fraud.

Appendix A

IBM SaaS is responsible for the acquisition and monitoring of Customer invoices and will work directly with service providers to ensure timely delivery and receipt. IBM SaaS will utilize standard IBM SaaS invoice readers to load manual and electronic invoices into the IBM SaaS. Only invoices that can be accessed and downloaded in IBM's preferred format will be considered in scope. Customer must assist with establishing proper access and authorization on accounts to ensure quality and timeliness of service. IBM SaaS and Customer will mutually agree on a list of Billing Account Numbers (BANS) to be loaded and tracked in the IBM SaaS.

The IBM SaaS offers an invoice approval workflow that follows a conditional path to route invoices for approval prior to submission to the financial system for payment. The invoice approval workflow is embedded as part of the IBM SaaS and defines the status of an invoice from invoice load to payment. Each invoice will follow two independent workflows, a standard IBM SaaS internal workflow and a Customer-defined workflow configured during implementation as described in the separate statement of work between the parties. The IBM SaaS internal workflow governs invoice entry through the completion of invoice validation/review. The second workflow directs the invoice to the appropriate customer staff for approval which may be hierarchical in nature and/or driven by a variety of logical business conditions. Invoice, circuit and allocations exceptions will be identified and flagged in the IBM SaaS. Critical exceptions must be cleared before an Invoice can be approved by IBM and/or Customer.

IBM will load electronic invoices with circuit and sub-line item detail when the telecom carrier provides such detail within the telecom carrier's bill format. Any bill format discrepancies will be researched and resolved by IBM and the telecom carrier.

IBM is responsible for ordering future electronic feeds from telecom carriers as new electronic formats become available. IBM will notify Customer of the invoice format change.

IBM is responsible for the reconfiguration of feeds caused by changes made by the telecom carrier supplying the feed provided that the new electronic feed from the carrier is a standard electronic format and one that is supported by the IBM SaaS.

IBM will load manual invoices for Customer into the Rivermine system at the line item level IBM will load manual invoices into Rivermine within three (3) business days of receipt.

Appendix B

Service Level Agreements
for
IBM Emptoris

IBM provides this Service Level Agreement ("SLA") to MEHC subject to the following terms. MEHC understands that this SLA does not constitute a warranty to MEHC.

1. Definitions

   a. "Authorized Contact" means the individual MEHC has specified to IBM who is authorized to submit Claims under this SLA.

   b. "Availability Credit" means the remedy IBM will provide for a validated Claim. The Availability Credit will be applied in the form of a credit or discount against a future invoice of subscription charges for the Service.

   c. "Claim" means a claim submitted by MEHC's Authorized Contact to IBM pursuant to this SLA that a Service Level has not been met during a Contracted Month.

   d. "Contracted Month" means each full month during the term of the Service measured from 12:00 a.m. Eastern US time on the first day of the month through 11:59 p.m. Eastern US time on the last day of the month.

   e. "Downtime" means a period of time during which production system processing for the Service has stopped and all of MEHC's users are unable to use all aspects of the Service for which MEHC has appropriate permissions. Downtime does not include the period of time when the Service is not available as a result of:

      - Planned System Downtime.
      - Force Majeure.
      - Problems with MEHC or third party applications, equipment or data.
      - MEHC or third party acts or omissions (including anyone gaining access to the Service by means of MEHC's passwords or equipment).
      - Failure to adhere to required system configurations and supported platforms for accessing the Service.
      - IBM's compliance with any designs, specifications, or instructions provided by MEHC or a third party on MEHC's behalf.

   f. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.

   g. "Force Majeure" means acts of God, terrorism, labor action, fire, flood, earthquake, riot, war, governmental acts, orders or restrictions, viruses, denial of service attacks and other malicious conduct, utility and network connectivity failures, or any other cause of Service unavailability that was outside IBM's reasonable control.

   h. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.

i. "Service" means the IBM Emptoris service(s) to which this SLA applies, associated with the SLA part numbers included in the Transaction Document.   This SLA applies to each Service individually and not in combination.

j. "Service Level" means the standard set forth below by which IBM measures the level of service it provides in this SLA.

2. Availability Credits

a. In order to be eligible to submit a Claim MEHC must have logged a support ticket for each Event with the IBM customer support help desk for the applicable Service, in accordance with IBM procedure for reporting Severity 1 support issues. MEHC must provide all necessary detailed information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event to the extent required for Severity 1 support tickets. Such ticket must be logged within twenty-four (24) hours of MEHC first becoming aware that the Event has impacted MEHC's use of the Service.

b. MEHC's Authorized Contact must submit MEHC's Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month that is the subject of the Claim.

c. MEHC's Authorized Contact must provide to IBM all reasonable details regarding the Claim, including but not limited to, detailed descriptions of all relevant Events and the Service Level claimed not to have been met.

d. Availability Credits will be based on the duration of the Downtime measured from the time MEHC reports that MEHC was first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved Service Level during each Contracted Month, as shown in the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.

e. For Bundled Services (individual Services packaged and sold together for a single combined price), the Availability Credit will be calculated based on the single combined monthly price for the Bundled Service, and not the monthly subscription fee for each individual Service. MEHC may only submit Claims relating to one individual Service in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one Service in a bundle in any Contracted Month.

f. The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed 10 percent (10%) of one twelfth (1/12th) of the annual charge paid by MEHC to IBM for the Service.

g. IBM will use its reasonable judgment to validate Claims based on information available in IBM's records, which will prevail in the event of a conflict with data in your records.

h. THE AVAILABILITY CREDITS PROVIDED TO YOU IN ACCORDANCE WITH THIS SLA ARE MEHC'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM. IF MEHC HAS MULTIPLE SLAs FOR SERVICES, THEN MEHC IS ONLY
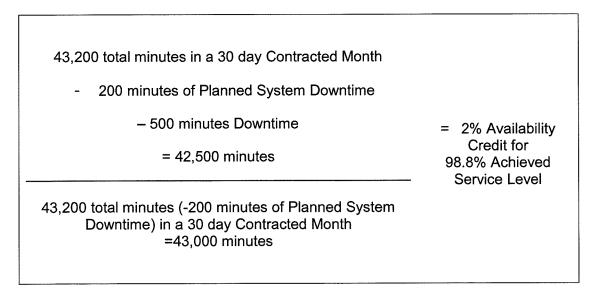
ENTITLED TO RECEIVE CREDITS UP TO A CUMULATIVE MAXIMUM IN ANY MONTH ACROSS ALL SLAs FOR THESE SERVICES OF 10%. IF PAID ANNUALLY MEHC IS ENTITLED TO ONE TWELTH (1/12th) OF THE ANNUAL EQUIVALENT CHARGE PAID BY MEHC TO IBM FOR THE SERVICES.

3. Service Levels – Availability of Service during a Contracted Month

Availability during a Contracted Month	Availability Credit (% of Monthly Subscription Fee for Contracted Month that is the subject of a Claim)
<99.0%	2%
<97.0%	5%
<95.0%	10%

Availability is calculated as: (a) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), minus (b) the total number of minutes of non-scheduled Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), with the resulting fraction expressed as a percentage.

Example: 500 minutes total non-scheduled Downtime during Contracted Month

43,200 total minutes in a 30 day Contracted Month

- 200 minutes of Planned System Downtime

– 500 minutes Downtime

= 42,500 minutes

43,200 total minutes (-200 minutes of Planned System Downtime) in a 30 day Contracted Month
=43,000 minutes

= 2% Availability Credit for 98.8% Achieved Service Level

4. Exclusions.

This SLA is made available only to MEHC (including any Participating Affiliates). This SLA does not apply to the following:
- Beta and trial Services.

- Claims made by MEHC's users, guests, or participants of the Service (other than Participating Affiliates).

If MEHC has breached any material obligations under the Terms of Use, Acceptable Use Policy or the Transaction Document, including without limitation, breach of any payment obligations, this SLA will not apply.

Exhibit 3

Additional Terms and Conditions

1) <u>MODIFICATIONS</u>. With respect to this Transaction Document only and notwithstanding anything to the contrary set forth in the IPAA or the ToU, except as set forth in the first paragraph of the Transaction Document, no modification, alteration or change to the terms of the IPAA, ToU or this Transaction Document shall be valid and enforceable against a party unless agreed in a writing executed by the authorized representatives of IBM and MEHC (or in the case of a modification impacting a particular Participating Affiliate only, a writing executed by the authorized representatives of IBM and such Participating Affiliate.

2) <u>EXCEPTIONS TO LIMITATIONS OF LIABILITY IN IPAA</u>. The limitations of liability set forth in the IPAA shall not apply to the following:
   a) payments made under IBM's intellectual property indemnity in section 1.12 (Intellectual Property Protection) of the IPAA;
   b) damages for bodily injury (including death), and damage to real property and tangible personal property for which IBM is legally liable; and
   c) damages for the unauthorized disclosure, misuse, or misappropriation of confidential information by IBM in violation of its confidentiality obligations under this Transaction Document.

3) <u>PUBLICITY</u>. Neither party shall advertise or publish the fact that Customer has contracted to purchase work from IBM.

4) <u>DATA SECURITY</u>. Notwithstanding anything to the contrary set forth in the IPAA or the ToU, IBM agrees that it shall comply with the requirements with respect to security of Customer data as set forth in Attachment 1 to this Exhibit 3.

5) <u>TERMINATION</u>. Customer may terminate this Transaction Document without cause by giving IBM not less than 90 days written notice. Upon such termination, Customer agrees to pay IBM for all charges for Services IBM provides and any products and Materials IBM delivers through the effective date of termination and reimbursable expenses IBM incurs through the effective date of termination. In addition, Customer will pay IBM termination charges according to the following Termination Fee Schedule:

Termination Fee Schedule
If Transaction Document is terminated in Year One: $39,114.00
If Transaction Document is terminated in Year Two: $19,557
If Transaction Document is terminated after Year Two: No termination charges.

The Termination Fees will be allocated among the Participating Affiliates in such proportions as are set forth in Exhibit A to this Transaction Document.

Should IBM: (a) become insolvent; (b) file a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) make a general assignment for the benefit of its creditors; or (d) have a receiver appointed; or (e) fail to provide the IBM SaaS in accordance with this Transaction Document, including the ToU, Customer may terminate the Transaction Document following thirty (30) days written notice to IBM and IBM's failure to promptly cure any default identified by Customer within such thirty (30) day period. Customer will have the right, in addition to terminating the Transaction Document, to all and other rights or remedies available at law, under contract and in equity. In the case of termination or expiration of this Transaction Document, provisions that by their nature are intended to survive such termination or expiration shall remain in full force and effect until fulfilled.

6) <u>COMPLIANCE WITH LAWS</u>. IBM will comply with all applicable laws and regulations and all applicable executive, judicial and administrative orders that apply to IBM as an information technology services provider or regulates IBM business. Without limiting the generality of the foregoing, IBM will, to the extent applicable to IBM as described in the foregoing sentence, comply with the Foreign Corrupt Practices Act, Executive Order No. 11246, as amended, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, the Veterans' Employment Opportunities Act of 1998, as amended; Executive Order No. 12432, as amended, if applicable, and 29 C.F.R. 471, Appendix A to Subpart A, if applicable.

7) <u>CONFIDENTIAL INFORMATION</u>.

Definition of Confidential Information. As used in this Transaction Document, the term "Confidential Information" means any nonpublic material or information of the other party, including but not limited to a party's research, development, products, product plans, services, lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade, secrets that the disclosing party has designated as confidential, or that the receiving party knows or reasonably should have known was confidential at the time of disclosure. Without limiting the foregoing, the software and any databases (including any data models, structures, non-Customer specific data and aggregated statistical data contained therein) of IBM shall constitute Confidential Information of IBM, and Customer data (including without limitation all Customer carrier related data, hosted passwords and user identities) shall constitute the Confidential Information of Customer. Notwithstanding the foregoing, IBM's obligations with respect to IBM's use, protection, and security of Content are not governed by this Section 7 (Confidential Information), but are as set forth in the TOU and Attachment 1 to Exhibit 3 of this Transaction Document.

Nonuse and Nondisclosure. The. Parties acknowledge that during the performance of this Transaction Document, each party will have access to certain of the other party's Confidential Information or Confidential Information of third parties that the disclosing party is required to maintain as confidential. Each party agrees that it will not, directly or indirectly, disclose the Confidential Information of the other party under any circumstances or by any means to any third person without the prior written consent of the other party. Each party further agrees that it will restrict access to the Confidential Information of the other party to those of its personnel, agents, and/or consultants, if any, who have a need to have access to the Confidential Information to perform the work or other obligations of such party called for by this Transaction

Document or, in the case of Customer, to use and enjoy the Services as contemplated by this Transaction Document, and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Section 7 (CONFIDENTIALITY) of this Transaction Document. In addition, each party agrees that, subject to any rights or licenses expressly granted in this Transaction Document, such party will: (i) not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (ii) not create any derivative work from Confidential Information of the other party; and (iii) return or destroy all Confidential Information of the other party in its possession upon termination or expiration of this Transaction Document.

Exceptions. Notwithstanding the foregoing, the provisions of this Section 7 (CONFIDENTIALITY) shall not apply to Confidential Information that: (a) is generally known to the public at the time disclosed; (b) is or becomes generally known to the public through no fault of the recipient party; (c) is rightfully communicated to the recipient party by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient party without access to or use of the Confidential Information of the other party; or (f) is approved for release or disclosure by the disclosing party in advance without restriction. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law or regulation, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and will provide assistance to the disclosing party to obtain a protective order; or (ii) to establish a party's rights under this Transaction Document, including to make such court filings as it may be required to do.

Further, IBM acknowledges that Customer, to the extent it is a regulated utility, or any of its duly authorized representatives, may from time to time discuss and disclose certain matters, including IBM's pricing and terms for the Services, with state public service commissions or other regulatory authorities whose involvement or approval results from Customer's status as a regulated utility; provided that such disclosures are required by applicable law or governmental order or are reasonably necessary to obtain an approval, permit or order from a regulatory authority and, to the extent permitted by applicable law, Customer provides reasonable written notice to IBM to permit IBM to obtain a protective order. Customer shall undertake, in making any such disclosures, to convey to such person the importance of maintaining confidentiality with respect to the information provided or the matters that are discussed. IBM hereby consents to such discussions regarding and disclosures of such information in connection with such regulatory proceedings that are held as a result of Customer's status as a regulatory utility, subject to compliance with the obligations in this paragraph.

Protection. Confidential Information of the other party will be made available by a party to its employees only on a "need to know" basis and only after notifying such employees of the confidential nature of the Confidential Information and after having obligated them to the nonuse and nondisclosure obligations of this Section 7 (CONFIDENTIALITY) of this Transaction Document (or to nonuse and nondisclosure obligations at least as protective of the Confidential Information as those in this Section 7 (CONFIDENTIALITY) of this Transaction Document). Each party agrees to take all reasonable precautions to protect the confidentiality of Confidential Information of the other party as required by this Section 7 (CONFIDENTIALITY) and, upon written request by the other party, to destroy or return to that

party any of that party's Confidential Information in its possession, including any such Confidential Information contained in any other documents.

Neither this Section 7 (CONFIDENTIALITY) nor any disclosure of Confidential Information made under it grants the receiving party any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the disclosing party. Subject to each party's obligations of confidentiality under this Section 7 (CONFIDENTIALITY), the receipt of Confidential Information under this Transaction Document will not in any way limit the receiving party from: (1) developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of the disclosing party; (2) developing, manufacturing, marketing or providing products or services to others who compete with the disclosing party; (3) assigning its employees in any way it may choose; or (4) entering into any business relationship with any other party.

Ownership of Customer Data. Customer retains all right, title and interest in and to all of Customer's Confidential Information including Customer data, subject only to the limited right granted to IBM under this Transaction Document to use such Confidential Information as necessary to provide the Services. IBM retains all right, title and interest in and to all of IBM's Confidential Information.

8) <u>NOTICES</u>. Any notice by either party to the other shall be delivered to the office of the designated representative of the other party, or, if deposited in the mail properly stamped with the required postage and addressed to the office of such representative. The parties' designated representatives and addresses for purposes of notice shall be as set forth in the Transaction Document. Either party may change the name or address of the designated recipient of notices by delivery of a notice of such change as provided for in this Section. Notwithstanding the foregoing, with regard to the day to day communications related to IBM's performance of Services (for which notice is not expressly required hereunder), the parties may communicate by email and other electronic means.

**Attachment 1
to
Exhibit 3**

ADDITIONAL TERMS AND CONDITIONS REGARDING
DATA SECURITY

1. Any information and data provided by Customer to IBM (electronically or otherwise) and used by IBM in the performance of its obligations under this Transaction Document ("Data") shall remain at all times the property of Customer. It shall be identified, clearly marked and recorded as such by IBM on all media and in all documentation. IBM shall not use Data, and shall not permit any subcontractor to use Data, for any purpose other than the purpose of performing the services set forth in this Transaction Document.

2. During the term of the Transaction Document, IBM shall provide Customer with notice regarding the physical location of all Data. Such notice shall be provided at least forty-eight hours in advance.

3. IBM shall implement measures designed to protect Data from any unauthorized access, corruption, loss, damage, or destruction in accordance with this Attachment 1 to Exhibit 3. IBM shall require its subcontractors to implement substantially similar measures to secure and protect their respective systems and facilities in accordance with this Attachment 1 to Exhibit 3. Such measures shall include appropriate physical, electronic and managerial procedures to safeguard and secure the Data both in transit and at rest in accordance with this Attachment 1 to Exhibit 3.

4. IBM shall make Data available to Customer's authorized users at all times as set forth in the Transaction Document. Upon written request, IBM shall provide Customer with all applicable keys with respect to encrypted Data for which IBM has responsibility for encryption under this Transaction Document.

5. IBM shall report to Customer, within forty-eight hours of discovery, any and all instances, including potential instances where there is reasonable evidence of suspicious activity of unauthorized access, corruption or loss, damage or destruction to the Data occurring on any system maintained by IBM or any subcontractor of IBM (of any tier). In each such case, IBM shall investigate such instance and provide Customer with the results of such investigation along with a remediation plan for Customer's approval promptly after such investigation. Upon such approval, IBM shall implement such plan in accordance with a schedule that is agreed upon between the Customer and the IBM. Such implementation shall be at IBM's sole cost and expense to the extent such instance resulted from IBM's failure to comply with its obligations regarding the security of Data. IBM shall provide updates on the investigation and remediation at a frequency agreed upon after the initial notification until the remediation plan has been fully implemented.

6. IBM agrees to comply (and require its subcontractors, with respect to laws that regulate such subcontractor's business in the performance of their obligations related to this Transaction Document, to comply) with applicable laws and regulations with respect to the protection and security of the Data (as such laws and regulations are amended from time to time) that are applicable to IBM as an information technology services provider in the performance of Services under this Transaction Document and at all times during the term of this Transaction Document, the data center(s) used by IBM (or its subcontractors) to provide the Services under this Transaction Document shall be SSAE 16 Type II certified. At Customer's written request, IBM shall provide Customer with evidence of such certification.

7. IBM agrees to provide Customer with such information and access to IBM's premises (upon giving reasonable notice) as Customer may reasonably require to validate that IBM is complying with the obligations referred to in this Attachment 1 to Exhibit 3. Such information and access shall be during normal business hours, conducted in a manner that minimizes disruption to IBM's business, may not occur more than once per year, and Customer agrees to comply with IBM's security and confidentiality requirements and shall not be entitled to any cost information or information related to other IBM customers.

8. In the event of termination of this Transaction Document IBM shall, when directed to do so by Customer, (i) erase and instruct all its subcontractors to erase all Data from the IBM's systems and magnetic data; and /or (ii) transfer all Data from IBM's systems, and cause its subcontractors to transfer all Data from their respective systems, to storage media designated by Customer or otherwise directly to Customer's systems, as determined by Customer.

9. The provisions set forth above apply to all IBM subcontractors as indicated, to the extent and during such periods as they are in possession of any Data.

10. IBM will follow Customer's reasonable requirements for all remote access to Customer resources provided to IBM in writing. IBM will maintain accurate records of employees or subcontractors who will have remote access to Customer resources and the country of origin of individual remote access. Upon reasonable cause, Customer reserves the right to deny any individual remote access to Customer's resources. So long as IBM makes diligent efforts to promptly replace any individual so removed, IBM shall not be liable for any service level agreements that are not met as a direct result of such removal.