

Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

Service Extension Support

Notwithstanding the IBM Software Maintenance terms of the ServiceElite contract or Passport Advantage Agreement, as applicable, the following terms govern Service Extension Support.

1. Scope of Work

Service Extension Support (Service) includes remote assistance (from IBM's support center or by electronic access as specified below) in response to problems discovered after a Product reaches end of service.

Product-specific terms are in Appendix A. Unless otherwise specified in Appendix A, default Service includes usage, known defect, and newly discovered defect support as described below. IBM Software Maintenance or IBM Passport Advantage coverage are prerequisites for this Service.

1.1 Usage and Known Defect Support

IBM will provide assistance for routine, short-duration installation and usage (how-to) questions and code related questions. IBM will also assist on supported product known defects for which corrective service information and fixes are available. This Service does not include preventive service, or the provision of patches, bypasses, or fixes designed to address security.

1.2 New Defect Support

If the supported Product contains defects such that it does not conform to Program specifications when properly used in the supported operating system environment for which the Program was designed, IBM will attempt to provide a corrective restriction, bypass, or fix package, that may require prerequisite or co-requisite fix packages. IBM may determine that a resolution is not feasible due to size, complexity, or risk factors associated with code implementation and dependent architectural modifications. Any fix is provided at the then-current maintenance level for the supported Product.

2. Client Responsibilities

Client agrees to install fix packages to update software to assist with problem resolution. If the fix package does not pass Client's test, IBM will use reasonable efforts to re-work the problem. Client will maintain IBM Software Maintenance or IBM Passport Advantage coverage as appropriate for the given Product.

3. Termination

IBM may withdraw this Service upon three months' written notice. Client may terminate the Service upon one month's written notice, after the Service has been in effect for at least two months for each of the Eligible Machines and supported Products. Client will receive a credit for any remaining prepaid period associated with the terminated Service. This Service does not automatically renew.

Appendix A: Product Specific Terms

A-1: AIX, i5/OS and IBM i

Refer to the supported Products listing for supported product and end of service details at <https://www-03.ibm.com/services/supline/products/>

Any newly acquired Eligible Machines and supported Products may be added upon written request, and once accepted by IBM will be reflected in the Schedule and may result in changes to the charge for this Service.

A-2: Licensed Program Products

The following support is covered for AIX Licensed Program Products (LPPs) and IBM i LPPs. Refer to the supported products listing for supported product and end of service details at <https://www-03.ibm.com/services/supline/products/>

Any newly acquired Eligible Machines and supported products may be added upon written request, and once accepted by IBM will be reflected in the Schedule and may result in changes to the charge for this Service.

A-2a: AIX Usage and Known Defect Support for (LPPs) Option

If Client has chosen full shift hours of coverage, IBM will use commercially reasonable efforts to respond to all other service calls within four hours.

A-2b: AIX New Defect Support for (LPPs) Option

IBM will provide new defect assistance for Severity 1 and Severity 2 problems on supported Products for which Client is entitled to receive support under the terms of the IBM Program license.

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

As used in this Statement of Work, "Client", "Customer", "you" and "your" refer to the contracting entity identified below.

Agreed to:
SANTA FE COUNTY (Client)

By Katherine D. [Signature] 2/19/19
Authorized signature

Name (type or print):

Date:

Enterprise number: 07908416

Enterprise address:

142 W PALACE
3RD FLR
SANTA FE NM 87501-2035

Agreed to:
International Business Machines Corporation (IBM)

By _____
Authorized signature

Name (type or print):

Date:

Reference Attachment number: MA9C1HS

Statement of Work number: AC1XGL

IBM address:

IBM CORPORATION
7100 HIGHLAND PARKWAY
SMYRNA, GA 30082

Approved as to form
Santa Fe County Attorney

By: [Signature]
Date: 2/13/19

Finance approved
E. Thomas
2.14.19

Given the nature of the Services, Client acknowledges that IBM is not able to verify or maintain the above list of Categories of Data Subjects. Therefore, Client will notify IBM about any required changes of the list above by contacting the email ID referenced in Section 7, "Data Privacy Officer and Other Controllers". IBM will process Personal Data of all Data Subjects listed above in accordance with the Agreement. If changes to the list of Categories of Data Subjects require changes of the agreed Processing, Client shall provide Additional Instructions to IBM as set out in the DPA.

2.2 Types of Client Personal Data and Special Categories of Client Personal Data

Client is responsible to provide IBM with, and keep updated, a list of Types of Client Personal Data and Special Categories of Client Personal Data that IBM can have access to during the Service. Client will notify IBM about any required changes of the list above by contacting the email ID referenced in Section 7, "Data Privacy Officer and Other Controllers".

Given the nature of the Services, Client acknowledges that IBM is not able to review data provided by Client to determine if it contains Types of Client Personal Data or Special Categories of Client Personal Data outside the list Client provided to IBM. However, if IBM becomes aware of any such Types of Client Personal Data or Special Categories of Client Personal Data in the data provided by Client, Client instructs IBM to delete or return the Types of Client Personal Data, at Client's request.

In the absence of other instructions from Client, IBM will assume that during the Services it can have access, even incidentally, to all types of data provided by Client, which data may include all Types of Client Personal Data and Special Categories of Client Personal Data. IBM has put in place its own technical and organization measures to safeguard all Client Types of Client Personal Data, as set out below.

3. Technical and Organizational Measures

The technical and organizational measures (TOMs) applicable to the Service can be found at: <https://www.ibm.com/mysupport/s/article/support-privacy>

These TOMs apply to all Content, including Client Personal Data. Client confirms its obligation to implement appropriate TOMs within its own area of responsibility as required by applicable Data Protection Laws.

4. Deletion and Return of Client Personal Data

Client is responsible to securely erase all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return. Client may purchase an offering for retention, or purchase an offering to have IBM delete or destroy the Client Personal Data.

IBM will securely delete any Client Personal Data received from the Client for the request for Service after and consistent with the duration of Processing stated above in Section 1.1.

5. Subprocessors

IBM may use the following Subprocessor(s) in the Processing of Client Personal Data: <https://www.ibm.com/mysupport/s/article/support-privacy>

IBM will notify Client of any intended changes to Subprocessors as follows:

The website will be updated to reflect new Subprocessors.

6. International Data Transfer

6.1 EU Standard Contractual Clauses

EU Standard Contractual Clauses signed by all IBM Data Importers is available at: <https://www.ibm.com/mysupport/s/article/support-privacy-for-eu>

7. Data Privacy Officer and Other Controllers

Client is responsible for providing complete, accurate and up-to-date information about its data privacy officer and each other Controllers (including their data privacy officer). Any updates to the information should be provided to IBM by contacting DPA.Help.project@uk.ibm.com along with the contract # and client name.

8. IBM Privacy Contact

The IBM privacy contact can be contacted at DPA.Help.project@uk.ibm.com.

Technology Support Services

This Data Processing Addendum Exhibit (DPA Exhibit) specifies the DPA for the identified Service.

1. Processing

IBM will process Client Personal Data for the Service, as described in the TD and as supplemented and specified by this DPA Exhibit.

1.1 Duration of Processing

The duration of the Processing will be for a period of one year after the close of each individual request for service.

1.2 Processing Activities

The processing activities with regard to Client Personal Data are:

- Combines
- Copies
- Deletes
- Hides
- Links
- Obscures
- Parses
- Reads
- Receives
- Sends
- Shares
- Stores
- Transforms
- Transitions
- Updates

2. Client Personal Data

2.1 Categories of Data Subjects

The categories of data subjects related to the Client Personal Data are:

- Client's employees (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)
- Client's affiliates employees (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)
- Client's (potential) customers (if those (potential) customers are individuals)
- Employees of Client's (potential) customers
- Client's business partners (if those business partners are individuals)
- Employees of Client's business partners
- Client's visitors
- Client's suppliers and subcontractors (if those suppliers and subcontractors are individuals)
- Employees of Client's suppliers and subcontractors
- Client's agents, consultants and other professional experts (contractors)

The list set out above is information about the Categories of Data Subjects whose Personal Data generally can be processed within the Service.

Data Processing Addendum



This Data Processing Addendum (DPA) and its applicable DPA Exhibits apply to the Processing of Personal Data by IBM on behalf of Client (Client Personal Data) in order to provide Cloud Services and other services agreed in the Agreement (Services). DPA Exhibits for each Service will be provided in the applicable TD. This DPA is subject to the terms of the Agreement (capitalized terms used and not defined herein have the meanings given them in the General Data Protection Regulation 2016/679 (GDPR)). In the event of conflict the DPA Exhibit prevails over the DPA which prevails over the Agreement except where explicitly set out in the Agreement identifying the relevant Section of the DPA over which it prevails.

1. Processing

1.1 Client (a) is the sole Controller of Client Personal Data or (b) has been instructed by and obtained the authorization of the relevant Controller(s) to agree to the Processing of Client Personal Data by IBM as set out in this DPA. Client appoints IBM as Processor to Process Client Personal Data. If there are other Controllers, Client will identify and inform IBM of any such other Controllers prior to providing their Personal Data, as set out in the DPA Exhibit.

1.2 A list of categories of Data Subjects, types of Client Personal Data, Special Categories of Personal Data and the processing activities is set out in the applicable DPA Exhibit for a Service. The duration of the Processing corresponds to the duration of the Service, unless otherwise stated in the respective DPA Exhibit. The nature, purpose and subject matter of the Processing is the provision of the Service as described in the applicable TD.

1.3 IBM will Process Client Personal Data according to Client's written instructions. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, this DPA including the applicable DPA Exhibit, and, if applicable, Client's and its authorized users' use and configuration of the features of the Service. Client may provide further instructions that are legally required (Additional Instructions). If IBM believes an Additional Instruction violates the GDPR or other applicable data protection regulations, IBM will inform Client without undue delay and may suspend the performance until Client has modified or confirmed the lawfulness of the Additional Instruction in writing. If IBM notifies Client that an Additional Instruction is not feasible or Client notifies IBM that it does not accept the quote for the Additional Instruction prepared in accordance with Section 10.2, Client may terminate the affected Service by providing IBM with a written notice within one month after notification. IBM will refund a prorated portion of any prepaid charges for the period after such termination date.

1.4 Client shall serve as a single point of contact for IBM. As other Controllers may have certain direct rights against IBM, Client undertakes to exercise all such rights on their behalf and to obtain all necessary permissions from the other Controllers. IBM shall be discharged of its obligation to inform or notify another Controller when IBM has provided such information or notice to Client. Similarly, IBM will serve as a single point of contact for Client with respect to its obligations as a Processor under this DPA.

1.5 IBM will comply with all EEA data protection laws and regulations (Data Protection Laws) in respect of the Services applicable to Processors. IBM is not responsible for determining the requirements of laws applicable to Client's business or that IBM's provision of the Services meet the requirements of such laws. As between the parties, Client is responsible for the lawfulness of the Processing of the Client Personal Data. Client will not use the Services in conjunction with Personal Data to the extent that doing so would violate applicable Data Protection Laws.

2. Technical and organizational measures

2.1 IBM will implement and maintain technical and organizational measures set forth in the applicable DPA Exhibit (TOMs) to ensure a level of security appropriate to the risk for IBM's scope of responsibility. TOMs are subject to technical progress and further development. Accordingly, IBM reserves the right to modify the TOMs provided that the functionality and security of the Services are not degraded.

2.2 Client confirms that the TOMs provide an appropriate level of protection for the Client Personal Data taking into account the risks associated with the Processing of Client Personal Data.

3. Data Subject Rights and Requests

3.1 To the extent permitted by law, IBM will inform Client of requests from Data Subjects exercising their Data Subject rights (e.g. rectification, deletion and blocking of data) addressed directly to IBM regarding Client Personal Data. Client shall be responsible to respond to such requests of Data Subjects. IBM will reasonably assist Client in responding such Data Subject requests in accordance with Section 10.2.

3.2 If a Data Subject brings a claim directly against IBM for a violation of their Data Subject rights, Client will indemnify IBM for any cost, charge, damages, expenses or loss arising from such a claim, to the extent that IBM has notified Client about the claim and given Client the opportunity to cooperate with IBM in the defense and settlement of the claim. Subject to the terms of the Agreement, Client may claim from IBM amounts paid to a Data Subject for a violation of their Data Subject rights caused by IBM's breach of its obligations under GDPR.

4. Third Party Requests and Confidentiality

4.1 IBM will not disclose Client Personal Data to any third party, unless authorized by the Client or required by law. If a government or Supervisory Authority demands access to Client Personal Data, IBM will notify Client prior to disclosure, unless prohibited by law.

4.2 IBM requires all of its personnel authorized to Process Client Personal Data to commit themselves to confidentiality and not Process such Client Personal Data for any other purposes, except on instructions from Client or unless required by applicable law.

5. Audit

5.1 IBM shall allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client of IBM companies Processing of Client Personal Data in accordance with the following procedures:

- a. Upon Client's written request, IBM will provide Client or its mandated auditor with the most recent certifications and/or summary audit report(s), which IBM has procured to regularly test, assess and evaluate the effectiveness of the TOMs.
- b. IBM will reasonably cooperate with Client by providing available additional information concerning the TOMs, to help Client better understand such TOMs.
- c. If further information is needed by Client to comply with its own or other Controllers audit obligations or a competent Supervisory Authority's request, Client will inform IBM in writing to enable IBM to provide such information or to grant Client access to it.
- d. To the extent it is not possible to otherwise satisfy an audit obligation mandated by applicable law, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), the Client or its mandated auditor may conduct an onsite visit of the facilities used to provide the Service, during normal business hours and only in a manner that causes minimal disruption to IBM's business, subject to coordinating the timing of such visit and in accordance with any audit procedures described in the DPA Exhibit in order to reduce any risk to IBM's other customers.

5.2 Each party will bear its own costs in respect of paragraphs a. and b. of Section 5.1. Any further assistance will be provided in accordance with Section 10.2.

6. Return or Deletion of Client Personal Data

6.1 Upon termination or expiration of the Agreement IBM will either delete or return Client Personal Data in its possession as set out in the respective DPA Exhibit, unless otherwise required by applicable law.

7. Subprocessors

7.1 Client authorizes IBM to engage subcontractors to Process Client Personal Data (Subprocessors). A list of the current Subprocessors is set out in the respective DPA Exhibit. IBM will notify Client in advance of any changes to Subprocessors as set out in the respective DPA Exhibit. Within 30 days after IBM's notification of the intended change, Client can object to the addition of a Subprocessor on the basis that such addition would cause Client to violate applicable legal requirements. Client's objection shall be in writing and include Client's specific reasons for its objection and options to mitigate, if any. If Client does not object within such period the respective Subprocessor may be commissioned to Process Client Personal Data. IBM shall impose substantially similar data protection obligations as set out in this DPA on any approved Subprocessor prior to the Subprocessor Processing any Client Personal Data.

7.2 If Client legitimately objects to the addition of a Subprocessor and IBM cannot reasonably accommodate Client's objection IBM will notify Client. Client may terminate the affected Services by providing IBM with a written notice within one month of IBM's notice. IBM will refund a prorated portion of any pre-paid charges for the period after such termination date.

8. Transborder Data Processing

8.1 By agreeing to this DPA, Client is entering into the EU Standard Contractual Clauses as referred to in the respective DPA Exhibit, with the Subprocessors established outside either the European Economic Area or countries considered by the European Commission to have adequate protection (Data Importers). Data Importers that are IBM companies are "IBM Data Importers".

8.2 If Client notifies IBM about another Controller and IBM does not object within 30 days after Client's notification, Client agrees on behalf of such other Controller(s), or if unable to agree, will procure agreement of such Controller(s), to be additional data exporter(s) of the EU Standard Contractual Clauses concluded between IBM Data Importers and Client. IBM has procured that the IBM Data Importers accept the agreement of such other Controllers. Client agrees and, if applicable, procures the agreement of other Controllers that the EU Standard Contractual Clauses, including

any claims arising from them, are subject to the terms set forth in the Agreement, including the exclusions and limitations of liability. In case of conflict, the EU Standard Contractual Clauses shall prevail.

8.3 If IBM engages a new Subprocessor in accordance with Section 7 that is an IBM Data Importer, IBM will procure such new IBM Data Importer's agreement with the EU Standard Contractual Clauses and Client on its behalf and/or on behalf of other Controllers, if applicable, agrees in advance to such IBM Data Importer being an additional data importer under the EU Standard Contractual Clauses. If Client is unable to agree for a Controller, Client will procure the agreement of such Controller. If the new Data Importer is not an IBM company (Third Party Data Importer), at IBM's discretion, (i) Client shall either enter into separate EU Standard Contractual Clauses as provided by IBM or (ii) an IBM Data Importer shall enter into a written agreement with such Third Party Data Importer which imposes the same obligations on the Third Party Data Importer as are imposed on the IBM Data Importer under the EU Standard Contractual Clauses.

9. Personal Data Breach

9.1 IBM will notify Client without undue delay after becoming aware of a Personal Data Breach with respect to the Services. IBM will promptly investigate the Personal Data Breach if it occurred on IBM infrastructure or in another area IBM is responsible for and will assist Client as set out in Section 10.

10. Assistance

10.1 IBM will assist Client by technical and organizational measures, insofar as possible, for the fulfillment of Client's obligation to comply with the rights of Data Subjects and in ensuring compliance with Client's obligations relating to the security of Processing, the notification of a Personal Data Breach and the Data Protection Impact Assessment, taking into account the information available to IBM.

10.2 Client will make a written request for any assistance referred to in this DPA. IBM will charge Client no more than a reasonable charge to perform such assistance or Additional Instructions, such charges to be set forth in a quote and agreed in writing by the parties, or as set forth in an applicable change control provision of the Agreement.



Title: Santa Fe County - IBM MA Merge for IBM i V7R1 SE -- (1/29/19 - 6/30/19) AC1XGL to AW2DDT

Client: Santa Fe County
Prepared For: Michelle Mascarenas-Jackson
(505) 986-6323
mjackson@santafecountynm.gov
Prepared By: Doug Bench
(505) 994-0680
doug.bench@mainline.com

Quote Number: MIS-39311-1-1
Quote Date: 1/29/2019
PPA Number:
PO Number:

Machine Code	Machine Description	Qty	Serial #	Start Date	End Date	Unit Sales	Extended Sales
Services 8202-E4D	SE FOR IBM i V7R1 - PER PROC Tax 7.875%	1	0000076FV	1/29/2019	6/30/2019	\$673.36	\$673.36
Customer accepts to pay NM gross receipt tax calculated with the applicable rate at the time of billing.						\$53.27	
Grand Total							\$726.63

Client's signature below indicates acceptance of this offer subject to the Mainline Terms and Conditions of Sale, attached to this proposal as Exhibit A, which is incorporated herein by this reference and made a part hereof, except as otherwise agreed to by the parties. Execution of this proposal authorizes Mainline to place on order, ship, and invoice any equipment, third party products and/or services identified in this proposal. Orders are non-cancellable unless otherwise stated in this proposal. Client is responsible for shipping costs; Mainline retains risk of loss and title to equipment until delivery. When applicable, Mainline will state shipping costs in this proposal, as well as on Client invoice. Expedited shipping requests will result in Client incurring additional shipping fees.

Price is valid for 30 days and subject to applicable taxes. Payment terms are net 30 days. The pricing set forth in the proposal is based upon the applicable manufacturer's current pricing matrix and the application of all charges and/or credits. Mainline will advise Client in writing prior to shipment of any changes in pricing by the manufacturer that would affect this proposal.

For hardware maintenance renewals, the inventory presented in this proposal is based on Client's current maintenance contract and information provided by Client. Client is responsible for ensuring that the inventory presented is all inclusive of the current installed environment and that applicable software is updated to current supported levels. Only the inventory presented will be covered for hardware maintenance and/or services as stated in the proposal.

All IBM PPA software pricing listed is based upon your entitled PPA agreement. Please be advised if you are not licensing this software on the full capacity of the server(s) you must adhere to IBM's Terms and Conditions regarding Sub-Capacity licensing as listed in your IPLA agreement.

SKU Services descriptions are available at <https://www.mainline.com/about/mainline-service-work-orders>.

Please return an executed copy of this entire Proposal, including the Proposal Acceptance and Signature Page, to me via mail or fax at 888-381-6851. Thank you for your confidence in Mainline Information Systems.



Santa Fe County Representative's

Authorized Signature/Title

Katherine Miller, Santa Fe County Manager

Santa Fe County Representative's

Print Name/Title

2.19.19

Date

Mainline Representative's

Authorized Signature/Title

Approved as to form

Santa Fe County Attorney


By: 

Date: 2/13/19

Finance approved
E Thomas
2.14.19

MEMO

TO: Katherine Miller
County Manager

FR: Roberta Joe 
Assistant County Attorney

DATE: February 13, 2019

RE: Mainline and IBM agreements

According to IT, the County's current version of IBM i Series is not supported by IBM for software support/ maintenance. The IBM i Series supports the County's AS400/Central Square environment. IT had been obtaining software support services off of a GSA price agreement. The GSA price agreement is with a software and equipment broker Mainline Information Systems. According to IT, the GSA price agreement does not offer the software support that is needed by the County.

The service that IT needs for the AS400 is considered a "Service Extension." According to Mainline and IT, a Service Extension is not included in the services offered under the GSA price agreement, so Mainline has sent the County several documents to be signed by the County in order to obtain the Service Extension that is not included in the GSA price agreement.

The broker Mainline was willing to modify its agreement (quote) to remove certain provisions that the County could not agree to. That agreement (the Mainline quote) is attached and approved as to form. Mainline also send IT several IBM documents that need to be signed by the County if IT is going to secure this Service Extension.

The main IBM agreement is the IBM Statement of Work for ServiceElite (IBM SOW). The IBM SOW references several links to other agreements (that have to be downloaded) that contain terms and conditions that apply to IBM's services. I reviewed the IBM SOW and it contains provisions that the County cannot agree to and there are other provisions that are unclear.

The IBM SOW incorporates a document called the Data Processing Addendum (DPA) and a DPA Exhibit. It is not clear whether the Service Extension or services that IBM will provide to the County involves any transmission of "Client Personal Data." The DPA also contains a provision wherein the client Santa Fe County agrees to indemnify IBM. It is also unclear whether the DPA Exhibit applies to the County because it is unclear whether any Client Personal Data will be transmitted by the County to IBM under the Service Extension. The DPA Exhibit also applies the General Data Protection Regulation 2016/ 679 or "GDPR." I think GDPR is an international regulation that applies to EU countries.

Since early February, I have been trying to get information or clarification on these issues from Mainline who relays information onto IBM. IBM has not indicated that it is willing to modify its agreements or enter into a separate addendum to their Statement of Work.

The cost of the Mainline Service Extension is \$726.63 for a period of time that would end on June 30, 2019. IT believes that the County's procurement of this Service Extension is urgent.

Due to the short period of time and the relatively low fee for this Service Extension, I have approved the IBM SOW as to form even though it contains indemnification and is unclear as to what applies to the County and what the County is agreeing to by its signature on the IBM SOW.

EXHIBIT A – MAINLINE TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE (THE “TERMS”) GOVERN THE SALE OF PRODUCTS BY MAINLINE TO CLIENT. MAINLINE AGREES TO SUPPLY THE PRODUCTS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. MAINLINE’S ACCEPTANCE OF CLIENT’S PURCHASE ORDER OR EXECUTED PROPOSAL AND AGREEMENT TO PROVIDE PRODUCTS IS EXPRESSLY MADE CONDITIONAL ON CLIENT’S ACCEPTANCE OF THESE TERMS. IN THE EVENT CLIENT’S PURCHASE ORDER INCLUDES TERMS AND CONDITIONS THAT DIFFER FROM OR ARE IN ADDITION TO THESE TERMS SET FORTH HEREIN, CLIENT’S TERMS AND CONDITIONS ARE EXPRESSLY REJECTED BY MAINLINE AND ARE NULL AND VOID.

1. DEFINITIONS

1. “CLIENT” means the party who orders Products from MAINLINE pursuant to these Terms.
2. “Confidential Information” means secret processes, trade secrets, customer lists, personnel statistics, pricing, pricing methods, techniques, inventions, specifications, ideas, processes, prototypes, models, drawings, marketing plans, financial data, computer programs, computer software, and any information included in a MAINLINE Proposal; provided, however, that this provision shall not be intended to make the Mainline Proposal confidential under any New Mexico law requiring disclosure of the Proposal.
3. “MAINLINE” means Mainline Information Systems, Inc.
4. “Equipment” means any hardware products and features identified under an applicable Proposal.
5. “Products” means collectively, Equipment, SKU Services, and Third Party Products.
6. “Proposal” means the quote, proposal or agreement or any other document submitted by MAINLINE to CLIENT identifying the Products and corresponding prices.
7. “Purchase Order” means an offer by CLIENT to purchase the Products identified in the Proposal. Without limitation upon the generality of the foregoing language, Purchase Order shall include any documentation, purchase order, electronic order or any other purchase authorization submitted by CLIENT to MAINLINE in response to a MAINLINE Proposal.
8. “SOW Services” shall mean professional services engagements to be provided by MAINLINE or MAINLINE’s authorized subcontractors to CLIENT pursuant to a separately executed statement of work, which shall reference a governing master services agreement (“MSA”).
9. “SKU Services” shall mean MAINLINE services identified by a corresponding part number in a Proposal.
10. “Third Party Products” means any third party software, maintenance or support services, or third party remarketed services identified under an applicable Proposal, for which MAINLINE will invoice and collect payment from CLIENT pursuant to the payment terms incorporated herein. For the avoidance of doubt, the applicable service provider or licensor will contract directly with CLIENT relating to the performance of Third Party Products.

2. FORMATION OF CONTRACT

1. CLIENT's submission of a Purchase Order or executed Proposal to MAINLINE constitutes an offer by CLIENT to purchase the Products subject to these Terms and formation of a contract is conditioned upon MAINLINE's subsequent acceptance. MAINLINE's acceptance of CLIENT's offer to purchase Products takes effect at the point where such offer is expressly accepted by MAINLINE upon the earlier of MAINLINE (i) sourcing the Products; or (ii) accepting CLIENT's payment for Products. Notwithstanding the foregoing, any Purchase Order terms are void and of no effect.
2. The sale of Products is subject to these Terms to the exclusion of any other terms and conditions stipulated or referred to by CLIENT. CLIENT acknowledges that it is aware of the contents of and agrees to be bound by these Terms. Neither MAINLINE's acknowledgment of a Purchase Order nor MAINLINE's failure to object to conflicting, different, or additional terms in a Purchase Order shall be deemed an acceptance of such terms and conditions or a waiver of the provisions hereof. For the avoidance of doubt, these Terms contain the exclusive terms and conditions governing MAINLINE's sale of Products to CLIENT.

3. SHIPPING; TRANSFER OF TITLE AND RISK OF LOSS; INSURANCE; INSTALLATION

1. Upon delivery of Equipment, title and risk of loss for the Equipment transfers to CLIENT. CLIENT is responsible for shipping costs. When applicable, shipping costs will be stated in the Proposal. Expedited shipping requests will result in CLIENT incurring additional shipping charges.
2. MAINLINE will provide, at no cost to CLIENT, standard shipping and transportation insurance for the physical risk of loss of the Equipment until delivery. In no case shall the insurance coverage provided by MAINLINE exceed thirty (30) days from the date of Equipment delivery.
3. When applicable, installation charges for the Equipment will appear on the Proposal. CLIENT agrees to provide a secure location and safe working environment for delivery of the Products. In the event CLIENT fails to make the Equipment available for installation within six (6) months from the date the Equipment ships, additional charges may apply.

4. THIRD PARTY PRODUCTS

1. MAINLINE warrants that it is an authorized remarketer of any Third Party Products. For all Third Party Products, the applicable third party will be the party responsible for providing the Third Party Products to CLIENT and CLIENT will look solely to the third party for any loss, claims or damages arising from or related to the provision of such Third Party Products. CLIENT acknowledges that the Equipment may include Third Party Products in which MAINLINE has no ownership or other proprietary rights and no title thereto shall be transferred hereunder. Any Third Party Products' agreement shall be separate and distinct from these Terms, and MAINLINE and its assigns shall not have any rights or obligations thereunder or with respect to such Third Party Products.

2. CLIENT acknowledges and agrees that MAINLINE's acceptance of CLIENT's order for Third Party Products is contingent upon CLIENT executing the applicable third party's required terms and conditions within thirty (30) days of placing the order for Third Party Products with MAINLINE. If CLIENT fails to execute the applicable third party's required terms and conditions within such thirty (30) day period, MAINLINE reserves the right, at its option, to either (i) reject CLIENT's order, or (ii) cancel CLIENT's order and refund amounts paid by CLIENT to MAINLINE for such Third Party Products.

5. **SKU Services; SOW SERVICES**

Intentionally Omitted.

6. **PRICES, PAYMENT AND TAXES**

1. Prices are stated in the Proposal. CLIENT agrees to make payment in full to MAINLINE for all amounts due within thirty (30) days from date of invoice. CLIENT also agrees to pay interest on all amounts that become past due. Interest will be charged at one and a half percent (1 ½%) per month or the highest rate allowed by law, whichever is less. CLIENT shall pay all sales and other taxes, however designated, except taxes based upon the income of MAINLINE, which are levied or imposed by reason of the transactions contemplated herein. Estimated taxes may be listed in the proposal. Final taxes will be calculated and stated on the invoice to CLIENT. If CLIENT is exempt from tax then CLIENT agrees to provide a valid sales tax exemption certificate prior to issuing a Purchase Order.

7. **OTHER**

1. **CONFIDENTIAL INFORMATION.** CLIENT agrees to treat as strictly secret and confidential and to use only for the purposes of evaluating a Proposal, all Confidential Information supplied by MAINLINE. CLIENT shall not disclose any Confidential Information to any person not entitled to receive it; provided, however, that this provision shall not be intended to make the Mainline Proposal confidential under any New Mexico law requiring disclosure of the Proposal. Upon the demand of MAINLINE, CLIENT promptly return to MAINLINE all Confidential Information furnished to CLIENT, together with all copies or reproductions then in CLIENT's possession or control.
2. **EQUIPMENT WARRANTIES.** MAINLINE warrants and represents that new Equipment purchased by CLIENT hereunder, if any, is eligible for all warranties and indemnities provided by the applicable manufacturer.
3. **GOVERNING LAW AND VENUE.** The applicable law governing these Terms shall be New Mexico law. THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY CLAIM, ACTIONS, PROCEEDING, OR COUNTERCLAIM BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THESE TERMS.