Software and Services Special Option

IBM

The terms of this Software and Services Special Option ("SSSO") ("**Agreement**") amongst **City of Corpus Christi** ("**Client**", also called "Customer", "you" and "your") and **International Business Machines Corporation** ("**IBM**") and **IBM Credit LLC** ("**IGF**") allow Client to acquire SSSO Offerings, as defined below, for one bottom-line price, payable in installments, a portion or all of which is prepaid and financed by IGF. These installments, plus the scheduled finance charges for the financed amounts, make up the Option Charges set forth in the "Charges" Section of this Agreement.

The terms of this Agreement are in addition to and may modify (for the purposes of this Agreement only), those of the "**Associated Documents**" which govern the acquisition of the SSSO Offerings. The terms of the Associated Documents are incorporated into this Agreement by reference.

IGF will finance a portion or all of the SSSO Offerings charges pursuant to the terms of the Lease/Purchase Master Agreement No: 069457786L. Such agreement, together with, if applicable, any transaction documents such as supplements or schedules thereto that reference this Agreement, each as amended, supplemented or otherwise modified from time to time by any addendum or otherwise are collectively referred to in this Agreement as the "**Finance Agreement**". All amounts financed will be subject to the Finance Agreement and Client and IGF agree to the terms and conditions of the Finance Agreement and this Agreement by signing a Finance Agreement and this Agreement. The parties acknowledge and agree that this Agreement and the Finance Agreement are separate agreements and that the Finance Agreement remains legally independent from this Agreement and its Associated Documents. The terms and conditions of the Finance Agreement remain unchanged. Neither IBM, nor IGF, nor any other IBM organization or affiliate makes any representation whatsoever regarding Client's accounting treatment applicable to the charges for transactions under this Agreement. IBM accounts for receivables under this Agreement as financing receivables for U.S. reporting purposes. Additional information regarding the financing provided herein is described in the Finance Agreement.

1. Confidentiality

Client understands that the terms of this Agreement (including the price offered to Client as part of this offering) are confidential, and Client agrees not to disclose the terms of this Agreement to any third party (including any agent, advisor, or consultant) without IBM's prior written approval pursuant to an IBM three-way non-disclosure Agreement, unless required by law, including but not limited to subpoena, court order, or in response to a request received pursuant to the Texas Public Information Act. IBM and IGF each acknowledge and agree that Client will post this Agreement and related or referenced agreements on the Client's official website used for public viewing of documents presented for approval of Client's governing body.

2. Definitions

The definitions in the Associated Document(s) shall apply to any capitalized term in this Agreement, unless such term is modified by this Agreement.

Authorized Use – the specified level at which Client is Authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSU's"), Processor value units ("PVUs") or other level of use specified by IBM.

Eligible Token Product – An offering specified in the Schedule for Token Licensing ("Schedule") included as Appendix A to this Agreement which is provided pursuant to a Token License.

Extended Price – summary of the price offered in Section 9: **Charges**.

IBM License Key Server (also "LKS") – means an application that serves license keys for Eligible Token Products running on remote machines or on the same machine as the license server.

International Passport Advantage Agreement ("IPAA") – is the agreement under which IBM provides various products to its customers per the terms and conditions of the agreement, including on-going support.

Option Charges – means the sum of the charges for the SSSO Offerings (as defined below), including all amounts due to IGF under the Finance Agreement for any financing thereof.

Proof of Entitlement ("POE") – evidence of Client's Authorized use. The POE is also evidence of Client's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide Client with the POE, then IBM may accept as the POE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Client obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

Relationship Suggested Volume Price ("RSVP") – is a pricing methodology available in accordance with its terms contained in the IPAA.

System Management Facility ("SMF") – is a component of z/OS that collects and records a variety of system and job-related information.

Token – A unit of value that is exchanged periodically via the IBM License Key Server (i.e., checked-in and checked-out) and can be expended toward use of Eligible Token Products. As long as the total amount of Tokens used at any one time does not exceed the number of Tokens authorized in your PoE(s), you may use the Token(s) for a single Eligible Token Product or any combination of the Eligible Token Products.

Token License – A Fixed Term license to use the Eligible Token Products as conveyed by the terms of the SSSO Agreement.

Token Value – The quantity of Tokens required to use an Eligible Token Product pursuant to a Token License. Each Eligible Token Product is assigned a Token Value in the Schedule.

3. **Contract Term**

   This Agreement starts on **January 31, 2019** ("Start Date") and remains in effect up to and including **January 31, 2024** ("End Date"), unless terminated earlier as provided herein. Client may only purchase SSSO Offerings (as defined below) during the contract term.

4. **SSSO Offerings**

   The offerings that qualify for the terms of this Agreement ("**SSSO Offerings**") may only be acquired directly from IBM and are as follows:

   Products included in Appendix A – Schedule for Token Licensing, which is attached to and made part of this Agreement (the "**Listed Software Products**") are comprised of the following:

   Eligible Token Products

5. **Associated Documents and Use of SSSO Offerings**

   The following IBM Agreements comprise the Associated Documents and govern this Agreement and the use of SSSO Offerings:

   1. State of Texas DIR Contract: DIR-TSO-3996, including all appendices.

6. **Authorizations**

   a. This Agreement grants you Tokens for you to expend toward your use of the Eligible Token Products up to the number of Tokens authorized herein. Tokens may not be reclassified to increase or decrease the number of Tokens authorized herein.

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     b.   To increase the number of Tokens procured you must execute a new Agreement or an Amendment to the Schedule.

7. Additional Terms

     a.   Eligible Token Products may contain a disabling device that will prevent them from being used after the end of the Fixed Term. You agree not to tamper with this disabling device or the Eligible Token Products. You should take precautions to avoid any loss of data that might result when the Eligible Token Products can no longer be used.

     b.   Token Licenses cannot be converted into perpetual licenses and do not entitle you to any option to purchase or discount towards a perpetual license. Should you wish to acquire any such perpetual licenses to the Eligible Token Product(s), contact your local sales representative.

     c.   Tables below will outline the quantity of Tokens purchased.

     d.   Acquisitions made under this Agreement may not be resold, rented, leased or transferred to third parties.

8. Verification

Client may deploy the SSSO Offerings, as permitted by Client's Associated Documents up to the maximum level of use authorizations (quantities) specified in this Agreement. If Client's actual deployment of any of the Listed Software Products has exceeded the specified maximum level of use authorizations (quantities), Client agrees to promptly notify IBM of such excess and to pay separately for such excess as IBM specifies in its invoice, at Client's then-current (1) RSVP level price for Programs made available under the IPAA and (2) suggested retail price for Programs not made available under the IPAA.

Client is responsible for (a) creating and maintaining accurate records of all deployments of SSSO Offerings and of use authorizations (quantities), (b) ensuring that Client does not exceed Client's use authorizations, and (c) remaining in compliance with the terms of this Agreement and the Associated Documents, including, without limitation, all of IBM's applicable licensing and pricing qualification terms (independently or collectively the "License Terms").

Upon reasonable notice, IBM may verify Client's compliance with the License Terms at all sites and for all environments in which Client uses (for any purpose) SSSO Offerings, subject to the License Terms. Such verification will be conducted in a manner that minimizes disruption to Client's business and may be conducted on Client's premises, during normal business hours. IBM may use an independent auditor ("**Auditor**") to assist with such verification, provided IBM has a written confidentiality agreement in place with such Auditor. Client agrees to provide to IBM and the Auditors accurate written records, system tool outputs (including without limitation the retained SMF 30 subtype 4 records), and other system information sufficient to provide auditable verification that Client's use of all SSSO Offerings is in compliance with the License Terms.

The rights and obligations set forth in this section (Verification) remain in effect during the term of this Agreement and for two years thereafter.

IBM will notify Client in writing if any such verification indicates that Client have used any of the SSSO Offerings in excess of its use authorizations or are otherwise not in compliance with the License Terms. In addition to Client's obligations to pay for any excess use, Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for: (1) S&S for the SSSO Offerings in such excess use for the lesser of the duration of such excess use or two years; and (2) any additional contractually binding or legally obligated charges and liabilities determined as a result of such verification, such as taxes, duties and regulatory fees.

Unless specifically agreed herein or in another signed agreement in writing between Client and IBM, the licenses for the Programs and S&S acquired under this Agreement may not be used to settle or resolve any software license non-compliance by Client that occurred prior to the Start Date of this Agreement. Further,

unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Agreement may not be used as authorization to deploy Programs prior to the Start Date.

9. **Charges**

Subject to annual appropriation of funds, Client shall pay IBM for all SSSO Offerings provided under this Agreement.

Client is responsible for making all IGF financing payments, including the portion of the Option Charges due to IGF, without any right of set-off, defense or claim of any kind in accordance with the terms of the Finance Agreement. IGF has authorized IBM to serve as its billing and collection agent for the portion of the Option Charges that are due to IGF under the Finance Agreement. Payments are inclusive of the IGF financing charges, which are subsidized from the software purchase.

The Option Charges are due on or before the following dates as follows:

Due Date	Amount Due
January 31, 2019	$234,358.04
January 31, 2020	$234,358.04
January 31, 2021	$234,358.04
January 31, 2022	$234,358.04
January 31, 2023	$234,358.05

Payment in full will be made in accordance with the Payment table listed above.

The Option Charges do not include any additional amounts incurred pursuant to the section of this Agreement entitled "Verification". The Option Charges and any additional charges beyond the Option Charges incurred pursuant to the section entitled "Verification" are exclusive of any applicable duties, fees and taxes. Client is responsible for any such duties, fees and taxes including, but not limited to, withholding taxes and, if as a result of Client moving, accessing or using any of the SSSO Offerings across a border, any customs duty, tax, levy or fee (including withholding taxes for the import or export of any such SSSO Offering).

The Option Charges are not cancelable except as may be otherwise provided in the section of this Agreement entitled "Termination".

10. **Termination**

Appendix A, "Standard Terms and Conditions for Product and Related Services Contracts" to the State of Texas DIR Contract, DIR-TSO-3996 contains provisions applicable to this Agreement pertaining to contract enforcement and pertaining to termination of this Agreement by Client including termination due to non-appropriation of funds.

Subject to the payment of the amounts described below, this Agreement may be terminated by mutual written agreement of the parties.

Upon termination Client will pay to IBM any unpaid portion of the Option Charges ("**Remaining Charges**"), including, but not limited to any amounts due pursuant to the Section of this Agreement entitled "Verification", plus any taxes which arise on or before the date of the termination. The Remaining Charges include the finance charges set forth in the section of the Finance Agreement related to termination and/or financing prepayment. Notwithstanding any such termination, but subject to Client's payment of the Remaining Charges the S&S for the Listed Software Products for the term of the coverage period specified herein continues in accordance with the terms and conditions of the Associated Documents.

11. **General**

   a. Acquisitions made under this Agreement may not be resold, rented, leased or transferred to third parties.

b. Each party will identify one point of contact to facilitate communication between the parties and the management of this Agreement.

c. Client may not transfer or assign this Agreement without the written consent of IBM and IGF. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.

d. It will be considered a material breach of this Agreement if Client sets-off, or attempts to set-off, any payments due IBM and IGF under this Agreement by any amounts IBM or IGF owes Client, or may owe Client, under other agreements Client may have with IBM or IGF or if Client refuses to make payments under this Agreement based upon any dissatisfaction Client may have under any such other agreements.

The prices and terms of this Agreement will not become effective unless Client returns a signed copy of this Agreement with Client's order to IBM on or before **January 31, 2019**.

The parties agree that this Agreement, including all Associated Documents, and the Finance Agreement, are the complete agreement between us and replaces any prior oral and/or written communications between us concerning this subject matter. By signing below, the parties agree to the terms of this Agreement and the Associated Documents. If there is a conflict among terms of this Agreement and those of the Associated Documents, for the purposes of this Agreement, those of this Agreement prevail.

Agreed to:
City of Corpus Christi

Agreed to:
International Business Machines Corporation

By_____
                Authorized signature

By_____
                Authorized signature

Name (type or print):

Name (type or print):

Position (type or print):

Position (type or print):

Date:

Date:

Client IBM Customer number: 1753842

Client address: 1201 Leopard St.

                Corpus Christi, Texas 78401-2162

Agreed to:
IBM Credit LLC

By_____
                Authorized signature

Name (type or print):

Position (type or print):

Date:

Appendix A: Schedule for Token Licensing

This Schedule, No. **"TKN 1"** specifies the Eligible Token Products and begins on January 31, 2019 and ends on January 31, 2024.

A. Summary and Coverage Dates

This section summarizes the Eligible Token Products, Current Software License S&S, and Token S&S, described in Tables 1 and Tables 2.

Table 1 - Token Table

Description	Period Start Date	Period Stop Date	Quantity
60 month Token License including 12 months Token S&S See Table 2	Token License 1/31/2019 -------- Token S&S included with License 1/31/2019	Token License 1/30/2024 -------- Token S&S included with License 1/30/2020	2232
Current Software License S&S – Year 1 See Appendix B - Supplement for Token Flexibility Enhancement No. **2**	2/1/2019	1/31/2020	
Token License S&S coverage - Year 2 See Table 2	1/31/2020	1/30/2021	2232
Current Software License S&S - Year 2 See Appendix B - Supplement for Token Flexibility Enhancement No. **2**	2/1/2020	1/31/2021	
Token License S&S coverage - Year 3 See Table 2	1/31/2021	1/30/2022	2232
Current Software License S&S - Year 3 See Appendix B - Supplement for Token Flexibility Enhancement No. **2**	2/1/2021	1/31/2022	
Token License S&S coverage - Year 4 See Table 2	1/31/2022	1/30/2023	2232

Current Software License S&S - Year 4 See Appendix B - Supplement for Token Flexibility Enhancement No. **2**	2/1/2022	1/31/2023	
Token License S&S coverage - Year 5 See Table 2	1/31/2023	1/30/2024	2232
Current Software License S&S - Year 5 See Appendix B - Supplement for Token Flexibility Enhancement No. **2**	2/1/2023	1/31/2024	

The Supplement for Token Flexibility Enhancement, No. **"TKN 2"**, included as Appendix B, describes the details and terms of use for Current Software Licenses being enhanced with Token flexibility.

Although a Token License is a Fixed Term Token License, Software Subscription and Support ("S&S") is included in the first year of the **Initial** Token Licenses specified in **Table 1**. The Extended Price listed in Section 9 Charges includes the total charges for the **5** years of Token Licenses, as well as the Token License S&S for the first year (12 months) only.

B. Additional Terms

Future Purchases of Additional Tokens:

Provided your S&S has not lapsed and that Client has obtained authority and additional appropriations, prior to 1/31/2022 for each net minimum order in the amount of $100,000.00 or more, you may purchase additional Tokens for the Eligible Token Products listed in this Schedule No. "TKN #1", Table 2 ("Additional Tokens") for the 12 month Fixed Term unit prices specified for the applicable ordering period stated below. Additionally, when you order Additional Tokens, you agree to order all subsequent Fixed Terms for the Additional Tokens such that all Additional Tokens are licensed for an entire Fixed Term made coterminous to 1/30/2024, in which case a portion of the last Fixed Term may be prorated. Each Fixed Term includes S&S for the applicable Eligible Token Products. You must purchase no fewer than the number of Tokens corresponding to one user (e.g., floating user, server, etc., as applicable), as shown in the Schedule under the heading, "Token Value" for each Eligible Token Product included in a single order.

Ordering Period	Token Unit Price Including S&S (12-month Fixed Term)
1/31/2019 – 1/31/2022	$154.36

The following terms apply to Additional Token purchases:
1) For all subsequent Fixed Term periods, Client agrees to order the Additional Tokens such that all Tokens are licensed for an entire Fixed Term, including S&S, and are made coterminous to the End Date.
2) A portion of the last Fixed Term may be prorated.
3) You must purchase no fewer than the number of Tokens corresponding to one user (e.g., floating user, server, etc., as applicable), as shown in the Schedule under the heading "Token Value" for each Eligible Token Product or Token-enabled product included in a single order.

To be eligible for the pricing referenced in this section, Additional Tokens: (1) cannot be deployed prior to the time of the order, (2) must be made generally available by IBM to its clients (i.e., not withdrawn from marketing and/or S&S), and (3) must be ordered **directly from IBM** by providing written authorization to IBM

(e.g., through order form, order letter, or purchase order).

IBM will provide an amendment to this Agreement with an updated Schedule to reflect the additional Tokens licensed.

C. Reporting

"Average Active Use Token Report" means a report provided to IBM by Client of the average tokens in active use by Client, by product, during a collection period of no less than sixty (60) consecutive days during a Reporting Period, and summed across all license servers, for all Eligible Token Products.

"Peak Use Token Report" means a report provided to IBM by Client showing the highest reported concurrent Token use, summed across all license servers, for all Eligible Token Products during a Reporting Period.

"Reporting Period(s)" mean each twelve (12) month period of the Term with the first twelve (12) month period beginning on the Effective Date of the Agreement.

"Final Token Report" means the last report before the Agreement End Date.

"Final Token Reporting Date" means 60 days prior to the End Date of the Agreement.

Reporting is required annually and 60 days prior to the End Date. At each anniversary Client will provide IBM with an Average Active Use Token Report and Peak Use Token Report. For the Final Token Report Client will provide the Average Active Use Token Report and the Peak Use Token Report on the Final Token Reporting Date.

The Final Token Report must be certified as complete and accurate by one of Client's senior executives or one of Client's financial auditor's officers. Further, each report must include supporting documentation sufficient to allow IBM to determine the factual and analytical basis of such report and its conclusions.

Each party will identify one point of contact that will be responsible for reporting between the parties.

The reports are to be submitted via email to tknrpt@us.ibm.com on or before each reporting due date.

The following information required on the Average Active Use Report for Eligible Token Products:

1. Token Product Description
2. Average Active Use Product

Report 1 – Average Active Use Token Report

Report 1 – Average Active Use Token Report	
60 Date Range covered by this Report: Month Day, Year to Month Day, Year	
Token Product Description	**Average Active Use**
IBM Maximo Asset Management for Concurrent User per token Initial FT License + S&S	xx
IBM Maximo Asset Management Scheduler for Concurrent User per token Initial FT License + S&S	xx
IBM Maximo for Utilities for Concurrent User per Token Initial FT License + S&S	xx

Report 2: Peak Use Token Report

Report 2 - Peak Use Token Report
Peak use of Tokens: ### on **Month Day Year**

D. Token Part Numbers

Table 2 – Initial Token Part Numbers including 12 Months Token S&S and Required Token License S&S Part Numbers

Initial Token License	Required Subsequent Year Token License S&S	Description of Token Products for 60 months Initial Token License includes 12 months of S&S; Subsequent Year Token S&S provides S&S coverage for entire Token term	Token Value	Unit of Measure
D1ZZSLL	E0PFCLL	IBM Maximo Asset Management for Concurrent User per token Initial FT License + S&S	14	Concurrent User
D200MLL	E0PFXLL	IBM Maximo Asset Management Scheduler for Concurrent User per token Initial FT License + S&S	4	Concurrent User
D203NLL	E0PH3LL	IBM Maximo for Utilities for Concurrent User per Token Initial FT License + S&S	17	Concurrent User

E. Two Year Token Term Extension

Provided your Token S&S has not lapsed and that Client has obtained authority and additional appropriations, Client may notify IBM by 12/31/2023 (30 days prior to contract end) of your wish to extend the term of this Agreement for 1 additional 2-year period after the End Date. The price will be $131.55 per Token per year, which will include a fixed term token license and S&S for 2 years.

A minimum order quantity of 2232 Tokens of eligible Maximo products in the current agreement will apply to this term extension.

IBM will provide an Amendment to this Agreement for this term extension that must be executed prior to 1/31/2024.

Appendix B: Supplement for Token Flexibility Enhancement

Client has requested to enhance certain IBM software licenses by adding the flexibility of Token Licensing. Table A, below, contains your current software licenses for IBM Programs as of **January 1, 2019** (the "Current Software") that will be subject to this Supplement for Token Flexibility Enhancement ("Supplement").

The terms of the Current Software licenses are modified by the Agreement together with this Supplement as follows:

1. The period of Token flexibility provided by this Supplement, No. **"TKN #2"**, begins on **February 1, 2019** and ends on **January 31, 2024** (the "Term").

2. Beginning on 2/1/2020 or after the completion of migration to Maximo 7.6.1 whichever comes earlier, your Current Software Licenses shall be classified as inactive, and you will be provided with new Token License keys that will allow Token usage.

3. During the Term following the completion of migration to Maximo 7.6.1, you may use the Eligible Token Products listed in Table A pursuant to the Token License granted under the Agreement. You may not use the Current Software license keys previously provided to you. In addition, you may not use the Current Software licenses as part of any IBM offered trade-up.

4. Upon expiration of the Term, your right to use the Token License keys will end and you may resume use of the Current Software license keys.

5. Fees associated with this Supplement are provided in Schedule No. **"TKN #1"**. During the Term, you must maintain IBM Software Subscription and Support for the Current Software licenses listed in Table A. You further acknowledge that under this Supplement you are being provided discount on standard Token prices in consideration of your continued payment of Software Subscription and Support for the Current Software licenses.

6. This Supplement does not add to your existing Current Software license entitlements. It only adds the flexibility of a Token License to your existing license entitlements up to the total number of Tokens authorized in your new Token Proof of Entitlement.

Table A

IPAA Site Number	Current Software Programs	Renewal Part Number	Number of Licenses	Eligible Token Product	Token Part Number
7933771	MAXIMO ASSET MANAGEMENT LIMITED USE AUTHORIZE USR ANNUAL SW S&S RNWL	E0AU1LL	420	IBM Maximo Asset Management for Concurrent User per token Intl FT License + S&S	D1ZZSLL
7933771	MAXIMO ASSET MANAGEMENT AUTHORIZED USER ANNUAL SW S&S RNWL	E0AU2LL	12	IBM Maximo Asset Management for Concurrent User per token Intl FT License + S&S	D1ZZSLL
7933771	MAXIMO FOR UTILITIES AUTHORIZED USER ANNUAL SW S&S RNWL	E0AUFLL	25	IBM Maximo for Utilities for Concurrent User per Token Initial FT License + S&S	D203NLL