

Cloud Services Agreement

Using this agreement, Client may order Cloud Services. This agreement and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under this Agreement.

Cloud Services

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

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for the Cloud Service. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Attachment or TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering content in a specific format).

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in the Cloud Service and grants IBM permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from the last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

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

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

there is a conflict, an Attachment or TD prevails over the terms of this agreement.

Warranties

IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

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

Charges, Taxes, and Payment

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

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

Liability and Indemnity

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

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included

in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Termination

IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

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

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and non-IBM products and services.

Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

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

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not

responsible for their actions, omissions, statements, or offerings.

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

The Agreement applies to IBM and Client and their respective Enterprise companies who avail themselves of the Agreement. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control with Client or IBM and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent to the address below, unless a party designates in writing a

different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

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

Agreed to:
Client Company Name:

By _____
Authorized signature

Title:

Name (type or print):

Date:

Client number:

Enterprise number:

Client address:

Agreed to:
IBM Company Name:

By _____
Authorized signature

Title:

Name (type or print):

Date:

Agreement number:

IBM address:

