

Service Description

IBM Watson for Clinical Trial Matching

This Service Description describes the Cloud Service IBM provides to Client. Client means the contracting party and its authorized users and recipients of the Cloud Service. The applicable Quotation and Proof of Entitlement (PoE) are provided as separate Transaction Documents.

1. Cloud Service

IBM Watson for Clinical Trial Matching (the "Cloud Service") is a cloud-based application that provides licensed healthcare professionals or other qualified medical personnel authorized by Client, (an analytic tool to assist in identifying clinical trials that match the clinical attributes of patients. This is an analytic tool to assist in identifying potential clinical trials that match the clinical attributes of an individual patient and includes the following key capabilities:

- The Cloud Service utilizes structured and unstructured patient data to query the available corpus of information (as described below in Section 1.1) containing clinical trials eligibility (inclusion and exclusion) criteria.
- The Cloud Service, when used for individual patients, provides the authorized user submitting a query a list of those clinical trials for which a patient may be eligible or ineligible within and the evidence to support such possible inclusion or exclusion.
- The Cloud Service, when used with an individual trial, provides the authorized user submitting the query a list of patients who may be eligible or have been determined as ineligible for the selected trial, based on the trial's eligibility criteria, with access to the supporting evidence to demonstrate their eligibility or exclusion.

The Cloud Service will be located in an IBM owned or controlled data center. It can only be deployed to Client's authorized users that have network connectivity with minimum latency of less than 500 milliseconds from Client's proxy server to the Cloud Service. Client is responsible for all network connectivity and quality between Client's proxy server and the Cloud Service users.

1.1 Base Corpus

The Cloud Service's corpus of information is a collection of information consisting of clinical trial eligibility criteria contained in <https://www.clinicaltrials.gov/> that is analyzed by the Cloud Service in order to generate its confidence-weighted responses to queries submitted by users of the system. Clinical Trials will focus on a variety of cancer types as outlined in the latest product release announcements or notes.

If new disease types are made commercially available in the Base Corpus, Client will have access to that enlarged Base Corpus for the remainder of the subscription term. Decisions regarding the manner or timing of additions to the Base Corpus are made at IBM's sole discretion.

1.2 Account Types

Client is solely responsible for (i) controlling all Authorized User accounts, including without limitation, verification of the identity of any Authorized User; and (ii) ensuring that only Authorized Users access an authorized user account or use the Cloud Service. An Authorized User is a Client clinician licensed to practice medicine or other qualified, licensed medical personnel authorized by Client to access the Cloud Service. All authorized users who use the Cloud Service solution can only do so directly on the Client's behalf and must comply with the terms of the Agreement, all applicable laws, regulations and requirements.

2. Content and Data Protection

The Data Processing and Protection data sheet (Data Sheet) provides information specific to the Cloud Service regarding the type of Content enabled to be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. Any details or clarifications and terms, including Client responsibilities, around use of the Cloud Service and data protection features, if any, are set forth in this section. There may be more than one Data Sheet applicable to Client's use of the Cloud Service based upon options selected by Client. The Data Sheet may only be available in English and not available in local language. Despite any practices of local law or custom, the parties agree that

they understand English and it is an appropriate language regarding acquisition and use of the Cloud Services. The following Data Sheet(s) apply to the Cloud Service and its available options. Client acknowledges that i) IBM may modify Data Sheet(s) from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to Data Sheet(s) will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to Data Sheet(s) will materially degrade the data protection of a Cloud Service.

Link(s) to the applicable Data Sheet(s):

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=12E7B050750C11E6865BC3F213DB63F7>

Client is responsible to take necessary actions to order, enable, or use available data protection features for a Cloud Service and accepts responsibility for use of the Cloud Services if Client fails to take such actions, including meeting any data protection or other legal requirements regarding Content.

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and DPA Exhibit(s) apply and are referenced in as part of the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in Content. The applicable Data Sheet(s) for this Cloud Service will serve as the DPA Exhibit(s). If the DPA applies, IBM's obligation to provide notice of changes to Subprocessors and Client's right to object to such changes will apply as set out in DPA.

3. Service Level Objectives

The service level objective for this Cloud Service is 99% uptime outside of any deployment of updates or scheduled maintenance windows. The service level objective applies only to the Cloud Service production environment. Service level objectives are a goal and do not constitute a warranty to Client. There is no refund, credit, or other remedy available to Client in the event IBM does not meet the service level objectives.

4. Technical Support

Technical support for the Cloud Service is provided via an online problem reporting system. IBM's software as a service support guide available at https://www-01.ibm.com/software/support/saas_support_guide.html provides technical support contact and other information and processes. Technical support is offered with the Cloud Service and is not available as a separate offering. Client will identify a team to provide first line of support to all Cloud Service authorized-users.

5. Entitlement and Billing Information

5.1 Charge Metrics

The Cloud Service is available under the charge metric specified in the Transaction Document:

- Patient is a unit of measure by which the Cloud Service can be obtained. A Patient is a person receiving or registered to receive medical treatment. Sufficient entitlements must be obtained to cover all Patients managed or tracked within the Cloud Service during the measurement period specified in Client's PoE or Transaction Document.
- Authorized User is a unit of measure by which the Cloud Service can be obtained. Client must obtain separate, dedicated entitlements for each unique Authorized User given access to the Cloud Service in any manner directly or indirectly (for example, through a multiplexing program, device or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the Cloud Service during the measurement period specified in Client's PoE or Transaction Document.

5.2 Overage Charges

If actual usage of the Cloud Service during the measurement period exceeds the entitlement specified in the PoE, an overage charge will be billed at the rate specified in the Transaction Document in the month following such overage.

5.3 Billing Frequency

Based on selected billing frequency, IBM will invoice Client the charges due at the beginning of the billing frequency term, except for overage and usage type of charges which will be invoiced in arrears.

5.4 Verification

Client will i) maintain, and provide upon request, records, and system tools output, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, and ii) promptly order and pay for required entitlements at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of the Cloud Service and for two years thereafter.

6. Term and Renewal Options

The term of the Cloud Service begins on the date IBM notifies Client of their access to the Cloud Service, as documented in the PoE. The PoE will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis, or terminates at the end of the term.

For automatic renewal, unless Client provides written notice not to renew at least 90 days prior to the term expiration date, the Cloud Service will automatically renew for the term specified in the PoE. Renewals are subject to an annual price increase as specified in a quote. In the event the automatic renewal is after receipt of an IBM notice of a withdrawal of the Cloud Service, the renewal term will end the earlier of the end of the current renewal term or the announced withdrawal date.

For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides 90 days written notice of termination. The Cloud Service will remain available to the end of the calendar month after such 90 day period.

7. Additional Terms

7.1 General

Client agrees IBM may publicly refer to Client as a subscriber to the Cloud Services in a publicity or marketing communication.

Client may not use Cloud Services, alone or in combination with other services or products, in support of any of the following high risk activities: design, construction, control, or maintenance of nuclear facilities, mass transit systems, air traffic control systems, automotive control systems, weapons systems, or aircraft navigation or communications, or any other activity where failure of the Cloud Service could give rise to a material threat of death or serious personal injury.

When using the Cloud Service, the result of a query (i.e. a report) is not intended to assist in the diagnosis of patients, nor is it intended to provide a recommendation for patient participation in any clinical trial; it is solely intended as a tool to aid in the investigation and evaluation of possible clinical trial options. The Cloud Service or any query result, does not replace a clinician's expert professional judgment and training.

7.2 Publicity

This Service Description does not confer any rights to Client to use in advertising, publicity or other marketing activities any name, trade name, trademark, or other designation of IBM, including any contraction, abbreviation, or simulation of any of the foregoing, without prior written agreement, and Client agrees not to use or refer the Cloud Services, this Service Description or its terms in any such activities without the express written approval of the other party.

7.3 Use Limitations or Restrictions

The Cloud Service is not designed for or intended for use in the delivery of critical care services.

7.4 Not Intended as a Medical Device

CLIENT AGREES THAT THE CLOUD SERVICE IS NOT INTENDED TO CONSTITUTE A DEVICE AS DEFINED IN SECTION 201(h) OF THE UNITED STATES FOOD, DRUG AND COSMETIC ACT AS AMENDED AND SECTION 2 OF THE CANADIAN FOOD AND DRUGS ACT (OR A SIMILAR DEFINITION UNDER APPLICABLE LAWS AND/OR REGULATIONS OF OTHER JURISDICTIONS)

FOR USE IN THE INVESTIGATIONAL DIAGNOSIS AND/OR TREATMENT OF SUBJECTS OR COMMERCIAL DIAGNOSIS AND/OR TREATMENT OF PATIENTS.

7.5 No Guaranty of Compliance

Use of the Cloud Service does not guarantee compliance with any law, regulation, standard or practice. Client is responsible for determining the applicability of and complying with all relevant laws, regulations and licensing requirements that apply to the use of the Cloud Service offering and the delivery of healthcare services. Any directions, suggested usage, or guidance provided by the Cloud Service does not constitute legal, accounting, or other professional advice, and Client is cautioned to obtain its own legal or other expert counsel. Client is solely responsible to ensuring Client and user activities comply with all applicable laws, regulations, standards and practices.

7.6 Data Rights and Use

Client agrees and represents that it has obtained, and is responsible for maintaining, all necessary rights, permissions, consents, authorizations, and permitted waivers of the same (including those required by applicable federal and state law) to disclose the Client Data to IBM and to grant the assignments and licenses described below. Furthermore, it is understood by the parties that the consent management tools and systems associated with Client content are maintained by Client outside the Cloud Service ("Client Consent Tools") and it is the responsibility of the Client to ensure that content in the Cloud Service is used, stored, and processed in accordance with such Client Consent Tools.

In addition to the permitted uses and disclosures provided for in the BAA, Client provides IBM the right, as well as the necessary permission as a business associate, to create de-identified data sets from Client PHI. Client also hereby provides IBM the right to use, reproduce, modify, display, disclose and distribute those de-identified data sets for any purpose during and after the term of the Agreement, including aggregating the de-identified data with other de-identified data sets in order to provide services (e.g., insights with respect to data) after which the data may not be disaggregated. Client represents that Client has and will maintain the consents, including those required by federal or state law, or other rights needed to provide the rights in this Agreement to IBM.

Except for the permitted uses and disclosures set forth above and in the BAA, IBM will not use or disclose the results arising from Client's use of the Cloud Service that are unique to your Content (Insights) or that otherwise identify Client. IBM may however use Content and other information (except for Insights) that results from Content in the course of providing the Cloud Service that has been anonymized; so that the data is rendered into a form that no longer constitutes personal data. IBM will use such data only for research, testing, and offering development.