

## General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms for IBM SaaS offerings (“Cloud Services”) and are in addition to the applicable Service Description (“SD”) for a Cloud Service (collectively Transaction Documents or TDs). The TDs and either the International Passport Advantage Agreement or the International Passport Advantage Express Agreement, as applicable (“Base Agreement”), are collectively the complete agreement (“Agreement”) regarding transactions for the Cloud Service. In the event of conflict, the terms of a SD prevail over these General Terms and both prevail over the terms of the Base Agreement.

### PART 1 - Terms

The Part 1 terms apply except as may be modified by a Part 2 Country Required Term for a specified country.

#### 1. Warranty

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

#### 2. Scheduled Maintenance

Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance.

#### 3. 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.

#### 4. Data Protection

Each Cloud Service offering 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 a 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).

The TD for each Cloud Service offering 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 Service. 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 offering is available at [www.ibm.com/cloud/datacenters](http://www.ibm.com/cloud/datacenters) or as described in the 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 Clause agreements pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that of their respective affiliates) 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 include personal data) 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/](http://www.ibm.com/privacy/details/us/en/) or equivalent IBM country version.

#### 5. Compliance with Laws

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

## 6. Suspension and 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.

## 7. Hybrid Entitlement Offerings

For Cloud Services designated as "Hybrid Entitlement", Client is entitled to use the Cloud Service and to use the identified Programs used in such Cloud Service, in an environment of Client's choice. As part of a Hybrid Entitlement, Client will have access to technical support and Program upgrades for the identified Programs. Use of the identified Programs and technical support and Program upgrades are available only as long as Client maintains a subscription to the Cloud Service. Programs, Support, and Program updates are provided in accordance with the section titled "Programs and IBM Software Subscription and Support" terms of the IBM International Passport Advantage Agreement (Z125-5831-09) or the equivalent terms of the applicable Base Agreement, with the following modifications:

- a. when Client's subscription to the Cloud Service ends, so does Client's license to the identified Programs under the Hybrid Entitlement, as well as their access to technical support and Program upgrades, and Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;
- b. any specified money back guarantee does not apply for identified Programs; and
- c. Client's acquired entitlements for a Hybrid Entitlement offering may be divided between use of the Cloud Service and use of the Programs on a Client computing environment. At any given time, however, the total number of entitlements acquired as specified on Client's PoE cannot be exceeded. Overage charges will apply as specified in the TD if Client's use exceeds the entitlement stated on the PoE.

If there is a conflict between the terms of this section and those of the IPLA, including the LI, the terms of the Agreement prevail. The identified Program included with the Cloud Service may not contain all features or functions of the particular generally available Program.

## Part 2 - Country Required Terms

The following country required terms apply for the specified country and modify the Part 1 term stated above.

### **AMERICAS**

*Add in a new "General" section at the end of the document and this provision:*

**In United States and Canada – General:** 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.

### **ASIA PACIFIC**

#### **Data Protection**

*In first paragraph, replace the second sentence with the following sentence:*

**In Malaysia:** Except for account data, Client is the Data User for any personal data included in the content, and appoints IBM as the Data Processor to process such personal data (as those terms are defined under the Personal Data Protection Act 2010).

**In Singapore:** Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a data intermediary to process such personal data (as those terms are defined in Personal Data Protection Act of Singapore).

**In Philippines:** Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a data intermediary to process such personal data (as those terms are defined in RA10173 Data Privacy Act of 2012).

*In the second paragraph, insert at the end of the 2nd sentence the following:*

**In India:** ", and that the Cloud Service's security functions and features constitute adequate security measures under the applicable data protection law."

*In third paragraph, replace the second sentence with the following sentences:*

**In Malaysia:** IBM, in its capacity as Data Processor may transfer Client's personal data outside of Malaysia. Client warrants and represents that the Data Subject has provided his/her consent for the transfer of personal data outside of Malaysia.

*In third paragraph, delete from second sentence the phrase:*

**In Singapore:** "including outside the European Economic Area (EEA)"

*In fourth paragraph, replace the first sentence with the following sentence:*

**In Singapore:** Upon request by either party, IBM, Client or their affiliates will enter into such additional agreements as may be prescribed in form and content by law for the protection of personal data.

*Add at the end of the section as a new paragraph:*

**In Australia:** To the extent IBM is collecting account data that contains personal information as defined in the Privacy Act 1988 (Cth), Client acknowledges that it has complied with the notification, collection and disclosure requirements of the Australian Privacy Principles as Schedule 1 to the Privacy Act.

**In New Zealand:** To the extent IBM is collecting account data that contains personal information as defined by the Privacy Act 1993, Client acknowledges that it has complied with the notification, collection and disclosure requirements of the Privacy Act.

## **EMEA**

### **Data Protection**

*In first paragraph replace phrase "EU Directive 95/46/EC" and replace with:*

**In Israel:** "Israeli Protection of Privacy Law - 1981 and applicable regulations".

*In second paragraph replace first sentence with the following:*

**In Sweden:** The Attachment or TD for each Cloud Service describes the technical and organizational security functions and features of the Cloud Service which IBM will implement.

*In the second paragraph, insert at the end of the 2nd sentence the following:*

**In Germany, Austria, and Switzerland:** ", and that the Cloud Service's security functions and features constitute adequate security measures under the applicable data protection law."

*Add to the end of the second paragraph the following:*

**In Sweden:** IBM will upon Client's written request provide Client with the most recent certifications, reports and other reasonably available documentation concerning the security measures for the Cloud Service

*In the third paragraph, insert at the beginning of the 2nd sentence the following:*

**In Germany and Austria:** "For that purpose,"

*Add at end of the third paragraph the following sentence:*

**In Italy:** IBM will cooperate in order for the Client to appoint IBM's subcontractors and affiliates as data processors.

*Add to the end of the fifth paragraph:*

**In Spain:** IBM will comply with requests to access, update or delete contact information if submitted to the following address: IBM, c/ Santa Hortensia 26-28, 28002 Madrid, Departamento de Privacidad de Datos".