

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 other applicable Transaction Documents (TDs) such as Service Descriptions, quotes, or proofs of entitlements. The TDs and any applicable Attachments 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 a Cloud Service. In the event of conflict, the terms of any other TDs prevail over these General Terms TD and both prevail over the terms of an Attachment and 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. IBM may change charges on 30 days' notice or as specified in a TD.

4. **Content and Data Protection**

Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service. Use of the Cloud Service will not affect Client's existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in a TD.

Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Cloud Service. This includes Client making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that of their respective affiliates) that such additional agreements will be subject to the terms of the Agreement.

IBM will return or remove Content from IBM computing resources 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). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.

Each Cloud Service is designed to protect Content as described in the Agreement. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at <http://www.ibm.com/cloud/data-security>, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is

responsible to assess the suitability of each Cloud Service for Client's intended use and Content. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions.

Client acknowledges that i) IBM may modify the DSP from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP 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 the DSP will materially degrade the security of a Cloud Service.

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 defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and 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.

If Client or any user exports or imports Content or use of any portion of the Cloud Service outside the country of Client's business address, IBM will not serve as the exporter or importer.

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. Failure to pay is a material breach.

Client may terminate a Cloud Service on one month's notice: (i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; (ii) if IBM's modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or (iii) if IBM notifies Client of a modification that has a material adverse effect on Client's use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If a Cloud Service is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Cloud Service terms. Upon termination, IBM may assist Client in transitioning Client's Content to an alternative technology for an additional charge and under separately agreed terms.

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.

8. General

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 <http://www.ibm.com/privacy/details/us/en/> or equivalent IBM country version.

IBM may use personnel and resources in locations worldwide, including contractors and subprocessors to support the delivery of the Cloud Services. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service offering is available at <http://www.ibm.com/cloud/datacenters> or as described in the Attachment or TD. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.

Client may not i) resell direct access to a Cloud Service to a third party outside Client's Enterprise; or ii) combine Cloud Services with Client's value add to create a commercially available Client branded solution for which Client charges a fee.

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 to the "Charges, Taxes, Payment" section at the end of the document and this provision:

In United States and Canada:

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.

EMEA

Add to "General" a new paragraph and ensure list properly re-letter:

For EU Member States, Iceland, Liechtenstein, Norway, Switzerland, and Turkey:

If Client includes, or authorizes others to include, personal data in the Content, Client represents that it is either the data controller or that it has, prior to agreeing to this Agreement or extending the benefit of the Cloud Services to any other data controller, been instructed by or obtained the consent of the relevant data controllers to enter into this Agreement. Client appoints IBM as a data processor to process such personal data. Client will not use the IBM Product in conjunction with personal data to the extent that doing so would violate applicable data protection laws.

IBM shall reasonably cooperate with Client in its fulfillment of any legal requirement, including providing Client with access to personal data. Client agrees that IBM may transfer Client's personal data across a country border, including outside the European Economic Area (EEA). If the Cloud Service is included in IBM's Privacy Shield certification listed at http://www.ibm.com/privacy/details/us/en/privacy_shield.html and Client chooses to have the Cloud Service hosted in a data center located in the United States, Client may rely on such certification for the transfer of personal data outside the EEA. Alternatively, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed. If IBM makes a change to the way it processes or secures personal data as part of the Cloud Services and such change causes Client to be noncompliant with data protection laws, Client may terminate the affected Cloud Services by providing written notice to IBM within 30 days of IBM's notification of the change to Client.