

# Terms of Use

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## General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms applicable for IBM Cloud Services Client may order under either the International Passport Advantage Agreement or the International Passport Advantage Express Agreement, as applicable ("Base Agreement") and are in addition to other applicable Transaction Documents (TDs) and Attachments, collectively the complete agreement ("Agreement") regarding transactions for a Cloud Service.

### 1. Content and Data Protection

- a. 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. 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 and to take necessary actions to order, enable, or use available data protection features appropriate for the Content being used with a Cloud Service. By using the Cloud Service, Client accepts responsibility for use of the Cloud Services, and acknowledges that it meets Client's requirements and processing instructions to enable compliance with applicable laws.
- b. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and only to the extent necessary to deliver the Cloud Service.
- c. IBM's Data Processing Addendum at <http://www.ibm.com/dpa> and applicable DPA Exhibit(s) apply and prevail over any conflicting terms 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.
- d. 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.
- e. Upon request by either party, IBM, Client or affiliates of either, 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.

### 2. Changes

- a. Client acknowledges that IBM may modify: i) a Cloud Service; and ii) the DSP, from time to time at IBM's sole discretion and such modifications will replace prior versions as of the effective date. Updates to a TD (such as a service description or statement of work) will take effect upon a new order or for TDs previously agreed to by the Client will take effect upon the change effective date for ongoing services, or upon the renewal date for Cloud Services that automatically renew. The intent of any modification will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional features and functionality. Modifications will not degrade the security or data protection features or functionality of a Cloud Service.
- b. IBM may withdraw a Cloud Service on 12 months' notice and IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM offering. Access to non-IBM services may be withdrawn at any time.

### 3. Payment and Taxes

- a. 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. One time charges will be billed upon acceptance of an order.
- b. If IBM has not otherwise committed to pricing during the term of a Cloud Service, then IBM may change charges on thirty days' notice.

### 4. Compliance with Laws

- a. 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.
- b. 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, except as required by data protection laws.

## 5. Term and Termination

- a. The term of a Cloud Service begins on the date IBM notifies Client that Client can access the Cloud Service. IBM 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 to IBM or the IBM Business Partner involved in the Cloud Service not to renew at least 30 days prior to the term expiration date, the Cloud Service will automatically renew for the specified term. For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides 30 days written notice to IBM or the IBM Business Partner involved in the Cloud Service of termination. The Cloud Service will remain available to the end of the calendar month after such 30 day period.
- b. IBM may suspend or limit, to the extent necessary, Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, violation of law, or breach of the use terms, including prohibited uses, set forth in Base Agreement and section 7(g) below. 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.
- c. 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.

## 6. Hybrid and Dual Entitlement Offerings

- a. Hybrid and Dual Entitlement offerings are Cloud Services which provide Client with access to Programs for use in the environment of Client's choice as well as software as a service functions provided in an IBM cloud environment. Programs, Support, and Program updates are provided in accordance with the Agreement and the section titled "Programs and IBM Software Subscription and Support" of the IBM International Passport Advantage Agreement (Z125-5831-10) (or equivalent agreement in place between the parties), with the following modifications:
  - (1) Client's Program license ends when the Cloud Service subscription ends. Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;
  - (2) any specified money back guarantee does not apply for identified Programs;
  - (3) for Hybrid Entitlement offerings, separate entitlements are required for the simultaneous use of the Cloud Service and use of the Programs in a Client computing environment; and
  - (4) for Dual Entitlement offerings, entitlements permit simultaneous use of the Cloud Services and use of the identified Programs in a Client computing environment.

## 7. General

- a. IBM is as an information technology provider only. Any directions, suggested usage, or guidance provided by IBM or a Cloud Service does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Service within any professional practice and should obtain their own expert advice. Client is responsible for its use of IBM and Non-IBM products and services.
- b. IBM may offer Non-IBM services, or an IBM Cloud Service may enable access to Non-IBM services, that may require acceptance of third party terms identified in the TD. Linking to or use of Non-IBM services constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such Non-IBM services.
- c. Client may use enabling software only in connection with use of the Cloud Service and according to any licensing terms if specified in a TD. Enabling software is provided as-is, without warranties of any kind.
- d. A Cloud Service or feature of a Cloud Service is considered "Preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality (such as beta, trial, no-charge, or preview designated Cloud Services). Preview services are excluded from available service level agreements. A Preview service may not be covered by support and IBM may change or discontinue a Preview service at any time and without notice. IBM is not obligated to release a Preview service or make an equivalent service generally available. Preview services are made available as-is, without warranties of any kind.

- e. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's use of a Cloud Service or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's use of a Cloud Service. IBM, its affiliates, and contractors of either, may use Account Data, for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service. The IBM Privacy Statement at <https://www.ibm.com/privacy/> (or equivalent country version) provides additional details with respect to Account Data and BCI as described in the Base Agreement.
- f. IBM may use personnel and resources in locations worldwide, including contractors to support the delivery of the Cloud Services. IBM may transfer Content, including personal data, across country borders. A list of countries where Content may be processed for a Cloud Service offering is described in a TD. IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations for a Cloud Service.
- g. Client may not use Cloud Services if failure of the Cloud Service could lead to death, bodily injury, or property or environmental damage. Client may not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine Cloud Services with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed.
- h. IBM may offer additional customization, configuration or other services to support Cloud Services, as detailed in a TD.

## **8. Previous Base Agreement Versions**

- a. For Clients acquiring Cloud Services under a Base Agreement version prior to version 10 dated Nov 2017, IBM SaaS offerings are IBM Cloud Services and the following additional terms apply.

### **8.1 Content and Data Protection**

- a. 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 ownership or license rights in such Content. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the Cloud Service.
- b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, its affiliates, and contractors of either, to use, provide, store and otherwise 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 data in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for a Cloud Service, 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.

### **8.2 Warranty**

- a. 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.

### **8.3 Scheduled Maintenance**

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