

General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms applicable for 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.

IBM may offer third party Cloud Services, or an IBM Cloud Service may enable access to third party Cloud Services (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.

1. Content and Data Protection

- a. IBM Data Security and Privacy Principles (DSP), at <http://www.ibm.com/cloud/data-security>, apply for standard IBM Cloud Services that are generally available. Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD. Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use. Client acknowledges that the Cloud Services used meet Client's requirements and processing instructions required to comply with applicable laws.
- b. IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service. IBM will treat Content as confidential by only disclosing to IBM employees, contractors to the extent necessary to provide the IBM Cloud Services.
- c. IBM's Data Processing Addendum at <http://www.ibm.com/dpa> and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.
- d. 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.
- e. For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services, 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 IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.

2. Changes and Withdrawal of Cloud Services

- a. At any time and at IBM's discretion, IBM may change i) the IBM Cloud Services, including the corresponding published descriptions; and ii) the DSP and other published data security and privacy documentation for the IBM Cloud Services. The intent of any change to the above will be to: i) make available additional features and functionality; ii) improve and clarify existing commitments; or iii) maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or data protection features or functionality of the IBM Cloud Services. Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date.
- b. Any changes that do not meet conditions specified in item a above will only take effect, and Client accepts, upon: i) a new order; ii) the term renewal date for the Cloud Services that automatically renew; or iii) notification from IBM of the change effective date for ongoing services that do not have a specified term.
- c. IBM may withdraw an IBM Cloud Service on 12 months' notice. IBM will continue to provide withdrawn IBM Cloud Services for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Access to Non-IBM Services may be withdrawn at any time.

3. Payment and Taxes

- a. IBM will invoice: i) recurring charges at the beginning of the selected billing frequency term; ii) overage and usage charges in arrears; and iii) one-time charges upon IBM's 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 uses any portion of the Cloud Services 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 begins on the date IBM notifies Client that Client can access the Cloud Services. The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. For automatic renewal, unless Client provides written notice of non-renewal to IBM or the IBM Business Partner involved in the Cloud Services not to renew at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until 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 an IBM Cloud Service if IBM reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the use terms, including prohibited uses, set forth in Base Agreement and section 7(f) below. IBM will provide notice prior to a suspension as commercially reasonable. If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Services. Failure to pay is a material breach.
- c. Client may terminate the IBM Cloud Services on 30 days' notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; ii) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of any such Client termination above or a similar termination of a Non-IBM Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Cloud Services are terminated for any other reason, Client will 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 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 acting as an information technology provider only. IBM's direction, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice. Client is responsible for its use of Cloud Services.
- b. Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Services and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms

specified in a TD. The licensing terms will specify applicable warranties, if any, **otherwise Enabling Software is provided as-is, without warranties of any kind.**

- c. Cloud Service or features of Cloud Services are 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. Examples of preview Cloud Services include beta, trial, no-charge, or preview designated Cloud Services. Any preview Cloud Service is excluded from available service level agreements and may not be supported. IBM may change or discontinue a preview Cloud Service at any time and without notice. IBM is not obligated to release a preview Cloud Service or make an equivalent service generally available. Preview services are made available as-is, without warranties of any kind.
- d. IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, and user ID. Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services. The IBM Privacy Statement at <https://www.ibm.com/privacy/> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.
- e. IBM may use personnel and resources in locations worldwide, including contractors to support the delivery of the IBM Cloud Services. Client's use of the Cloud Services may result in the transfer of Content, including personal data, across country borders. A list of countries where Content may be transferred and processed for an IBM Cloud Service is included in the applicable 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 the IBM Cloud Services.
- f. Client may not use Cloud Services if failure or interruption of the Cloud Services could lead to death, serious 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 a Cloud Service with Client's value add to create a Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
- g. 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 IBM Cloud Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services. Use of the IBM Cloud Services will not affect Client's ownership or license rights in Content.
- b. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data for processing in the IBM Cloud Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services 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 IBM Cloud Services or other IBM services using commercially reasonable care and skill and as described in the applicable Attachment or SD. These warranties end when the IBM Cloud Services or other IBM services end.

8.3 Scheduled Maintenance

- a. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.