

### IBM Bluemix

This Service Description describes IBM Bluemix Cloud Services available to Client. Client means the contracting party and its authorized users and recipients of the Cloud Service.

#### 1. Cloud Services

IBM Bluemix includes both Platform Services and Infrastructure Services that allow Client to deploy selected services and Client content, including Client applications and data, within IBM's public Bluemix offering environment. Bluemix also supports Client's hybrid cloud strategy with Bluemix dedicated and local offerings, which allow Client to deploy selected services in a dedicated IBM data center environment or directly on Client's own local infrastructure.

Platform Services enable Client to more quickly compose, build, and deploy enterprise-grade applications by providing access to a vast portfolio of composable Cloud Services.

Infrastructure Services provide access to computing, storage, and network resources to enable Client to quickly provision or set-up cloud computing infrastructure environments.

Platform and Infrastructure Services are self-managed by Client, including selection of available data centers and selection, configuration, and management of services (such as security, backup, failover, restore, and monitoring), which Client determines are necessary to meet Client's requirements and applicable laws, including regulatory requirements for content.

##### 1.1 Bluemix UI

Upon acceptance of Client's order and, if applicable, set-up of the dedicated or local environment, Client can use the Bluemix UI, which consists of on-line portals, mobile apps, APIs, command line interfaces, or, where available, assisted ordering (Client order placement via IBM sales support staff).

The Bluemix UI, support, and other information may be presented only in English, and the English version governs any conflict with a translation. Client is responsible for actions of Client's authorized users, including their use and associated charges for such use. Client is responsible for saving, maintaining, and protecting all access keys generated for each Cloud Service.

##### 1.2 Cloud Service Use

Specific services and offerings within Bluemix have additional terms, such as service levels, unique security provisions, or identification of enabling software, provided in an additional Service Description or Attachment available in the Bluemix UI, which override inconsistent provisions in this Service Description. Non-IBM services are provided by the third party service provider under the provider's agreement terms as disclosed in the Bluemix UI or via a link to the provider's website. IBM is not a party to such agreements and is not responsible for the provision of or support for the third party services, even if IBM invoices for them. Client's deployment and use of the Cloud Services constitutes Client's agreement with any additional or third party terms. Client should review the additional or third party terms before placing an order or deploying the service.

IBM will provide Client at least 30 days' notice in the Bluemix UI of any changes to Service Descriptions or Attachments, or the withdrawal of a particular service. Continued use of the Cloud Services after the effective date constitutes Client's acceptance of any changed pricing or terms. IBM may enable Client to continue to use existing instances of a withdrawn service during a transition period. For those services that are identified as Tier 1 in the Bluemix UI, IBM will not withdraw the service without making a functional equivalent available or providing at least five years' notice of the withdrawal.

If IBM disables or modifies an API, IBM will use commercially reasonable efforts to provide 1) advance notice of such change and 2) continued support for prior versions of the API for a reasonable period of time, unless there are operational, legal, or security risks or burdens.

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

##### 1.3 Setup and Maintenance

For Bluemix local environments, Client provides a local cloud infrastructure on Client's computers in conformance with the requirements specified in applicable Service Description or provided at

<http://www.ng.ibm.com/docs/overview/localinfrastructure.html>, which may be updated by IBM from time to time. Client agrees to provide IBM complete access to and control over the required cloud infrastructure during the term of the Cloud Service, except as Client may need to retain access to perform mandatory maintenance and support activities on the infrastructure as described in such requirements.

IBM will maintain and update public instances of the Platform and Infrastructure Services on a regular basis during scheduled maintenance windows as published in support documentation available from the Bluemix UI portal. IBM will deploy software updates to Client's dedicated and local environments as scheduled in advance, with appropriate notification to Client, with the goal of keeping the dedicated and local environments reasonably current with the public instances as described at <http://www.ng.ibm.com/docs/dedicated/index.html#maintaindedicated.html> and <http://www.ng.ibm.com/docs/overview/maintainlocal.html>, and in the relevant Service Description, as may be updated by IBM from time to time.

## 1.4 Client Solutions

Client may use the Cloud Services to create and make available to Client's end users Client solutions based on the Cloud Services. However, Client may not resell direct access to any of the Cloud Services to any third party without entering into a separate agreement with IBM. Client is responsible to have appropriate agreements in place with Client's end users, including rights to process content requested or provided by Client or Client's end users, and is responsible for their use of a Client solution. For Client's applications where Client permits Client's end users to log into Client's application using Facebook, Google, or other third party user credentials, these rights must include permission from Client's end users for IBM to receive and process all identifying information that is provided by that third party service.

Without limiting any valid indemnity claim under the "Liability and Indemnity" section of the Agreement, Client is solely responsible for any liability for damages or losses Client's end users incur as a result of using Client's solutions.

## 1.5 Network Access

Infrastructure Services connect to the Bluemix private network, the public network (except for services not normally exposed to the public network), and IBM's internal administrative network, and are assigned to a Client dedicated private VLAN. Client may be able to disable public network access as described in Bluemix documentation (available in the Bluemix UI). The private network enables a VPN connection for administrative access, intra-application communications, communications from different points of delivery/data centers, and for access to shared Infrastructure Service. The administrative VPN enables Client to administer and manage ordered services, and to upload, download, and manage content.

Client has no ownership or transfer rights to any IP address assigned to Client and may not use IP addresses or VLANs not assigned to Client. The IP Address Policy (available at <http://www.softlayer.com/legal>) governs use and provisioning of IP addresses, including IP addresses Client provides. If an Infrastructure Service is suspended, depending on the violation, public network or private network access may be disabled until resolution of the violation. Temporary access using the private network VLAN to remedy a violation may be available. Upon cancellation of the Cloud Services, Client must relinquish use of IP addresses, including pointing the DNS for Client's domain names away from the Cloud Services.

For Bluemix dedicated environments, Client's authorized users may access the environment through a secure VPN. IBM will provide the necessary application side, and Client will be responsible for providing the necessary user side, VPN infrastructure.

## 2. Security Description

### 2.1 Policies

Bluemix follows IBM's data security and privacy principles available at <http://www.ibm.com/cloud/data-security> and any additional terms provided in this section. Any change to IBM's data security and privacy principles will not degrade the security of the Cloud Service.

Client can review available Bluemix certifications at <https://www.ibm.com/cloud-computing/bluemix/compliance>. Any specified certifications IBM identifies for a particular service available from the Cloud Service will apply only to the service as IBM makes it available. Client's use of the Cloud Service, including Client's configuration and management of the service and content Client inputs or uses may impact compliance with its certifications. Client is responsible to i) determine if the Client selected Cloud Service meets Client's needs and ii) implement additional security measures needed to meet

Client's requirements and applicable laws, including regulatory requirements, for the type of content Client or its end users may provide or use with the Cloud Service, or any resulting application. Except for available certifications, a Cloud Service is not designed to any specific security requirements for regulated data, such as personal or sensitive personal information. Client will not include any regulated content which requires additional IBM commitments to meet regulatory requirements, such as export, privacy, or security without specific agreement from IBM.

For payment card data (PCI-regulated content), IBM is responsible only to the extent of physical security of the underlying computing environment and up to specified IBM system authorizations. Client is responsible to determine if PCI DSS requirements apply to Client's or its end users' use of the Cloud Service and implement any additional and necessary measures to meet such requirements.

## **2.2 Data Collection and Content**

IBM will not access Client's or Client's end users' content except and only to extent necessary: i) when Client expressly authorizes it; ii) as specifically described in a Service Description, or a mutually agreed addendum; or iii) as required by law. In the event of a legal or governmental request for access to Client's content, and to the extent reasonably able, IBM will provide notice to Client. For content containing personal information subject to EU Data Privacy regulations, IBM's Data Processing Agreement at <http://www.softlayer.com/legal> applies.

Access to the Bluemix UI may be suspended at any time for unauthorized access or suspected misuse. Client must promptly report any security concerns, lost or stolen account information, or unauthorized access to [security@softlayer.com](mailto:security@softlayer.com).

## **3. Service Level Agreements**

IBM provides service level agreements (SLAs) for IBM-branded Bluemix services. Service levels based on downtime do not include time related to exclusions, Bluemix UI unavailability, or time to reload, configure, enable, or access content or include other services indirectly affected by an outage (Downtime).

SLAs are available only if Client is compliant with the Agreement terms and do not apply to any third party including Client's end users. SLAs do not apply to beta, experimental, trial, or no-charge Cloud Services. SLAs are not a warranty and are Client's exclusive remedy for IBM's failure to meet a specified service level.

IBM will validate SLA claims based upon information provided and IBM system records. IBM will provide Bluemix UI or other notice of approved credits. IBM's reasonable determination of a credit is final. Client agrees to continue to make payment in full for Cloud Services while an SLA claim is being reviewed. Credits may not reduce payments due for a service below zero for any billing period.

If an IBM Business Partner sold Client a subscription to the Cloud Service, the monthly charge will be calculated on the then-current list price for the service that causes the SLA claim, discounted by 50%.

### **3.1 Exclusions**

No credits will be due for failure to meet an SLA because of: scheduled or announced maintenance; problems with Client or community content, technology, designs, or instructions; non-IBM build-packs; unsupported system configurations and platforms; Client infrastructure failures, including network, hardware, facility, or power; Client system administration actions, commands, or file transfers; Client errors or failures to provide needed information or access to resolve an outage; Client-caused security incidents or Client security testing; or other causes beyond IBM's reasonable control.

For Bluemix local environments, even though the Cloud Service is designed and deployed to survive most network or hardware failures, examples of failures or events that could cause an interruption in the Cloud Service include, but are not limited to: network performance slow down; switch; data center power interruption; and disk/memory. For local environments, outages caused by these failures or events and any recovery time that would be necessary to bring the entire Cloud Service back to full operation are excluded from Downtime.

### **3.2 Availability SLAs**

#### **3.2.1 Platform Services**

Downtime is the total accrued minutes when Client is unable to connect to any of its instances of a Platform Service and is measured from the time Client reported an outage event until the time at least one of the affected instances is available for use as validated by IBM system records. Availability,

expressed as a percentage, is calculated as the total number of minutes in a contracted month minus the total number of minutes of Downtime in that month divided by the total number of minutes in that month.

IBM provides a 99.95% availability SLA for Platform Services: i) configured for high availability and distributed across multiple Bluemix public regions; or ii) provisioned across multiple dedicated or local environments in geographically separated data-centers. In addition, IBM provides a 99.5% availability service level for multiple instances of a Platform Service provisioned within a single dedicated or local environment. Client is eligible for a credit as follows:

High Availability Multiple Public Region or Multiple Dedicated/Local Environments Availability Service Level	Single Dedicated/Local Environment Availability Service Level	Credit
< 99.95%	< 99.5%	10%
< 99.90%	< 99.0%	25%

Client must submit an SLA claim by using the form at <http://ibm.biz/bluemixsupport> within 60 days after the end of a contracted month providing sufficient information to identify the affected Platform Service, error messages, and other information necessary to validate the claim, referencing IBM support tickets, as applicable. The credit will be the highest applicable compensation based on the cumulative availability of the affected service during a contracted month and calculated using the monthly charges for such affected service. Credits for Platform Services cannot exceed 25% of such monthly charge.

### 3.2.2 Infrastructure Services

Downtime is the total accrued minutes a Client-identified Infrastructure Service is unavailable due to a service disruption based on an outage type listed below, as measured from the time of a validated outage affecting the identified service until the time such service is available, as validated by IBM support or system records.

For each 30 continuous minute period of Downtime, Client will receive a credit in the amount of 5% of the charges for the identified services directly impacted by the outage. Any period during which Downtime is less than 30 continuous minutes will not be eligible for credit. Downtime for different services may not be combined to meet this calculation.

Outage Type
Public Network
Private Network
Redundant Infrastructure Power and HVAC

Client's administrative user must submit an SLA claim ticket in the Bluemix UI portal within 60 days following the end of the outage event. The ticket must identify the affected service type, IP address, dates and times of the outage period, any error messages received, contact information, and a full description of the service loss, including logs, if applicable.

### 3.3 Infrastructure Hardware Replacement and Upgrade SLA

IBM will use reasonable efforts to minimize Downtime when replacing failed hardware and hardware components or performing a scheduled hardware upgrade. IBM will provide the specified credit:

- for hardware replacement, except as noted below, based on the time to replace, from the time IBM verifies a Client reported hardware failure;
- for planned hardware upgrades, based on the total Downtime of the service receiving the upgrade.

Service level time periods exclude any time required to reload the operating system or applications or time service performance may be degraded.

For failure to meet a specified service level time period, Client will be eligible for a credit based on the monthly charge for the service affected by the hardware replacement or upgrade, as follows:

Service Level Time Period	Credit Percent *
≤ 2 hours	none
> 2 hours	20%
> 6 hours	40%

Service Level Time Period	Credit Percent *
> 10 hours	60%
> 14 hours	80%
> 18 hours	100%

\* For POWER8 servers, the service level does not apply; IBM will use commercially reasonable efforts to replace a failed server, and there is no credit for failure to meet the above service levels.

#### 4. Technical Support

IBM provides basic level support at no additional charge for the Cloud Services. Advance support is included as part of a Bluemix dedicated or local environment for services executed within those environments. Client can select fee-based technical support offerings that provide Client additional support benefits.

Client may submit a support ticket describing the issue in accordance with the applicable support policy procedures. The support policies for Platform and Infrastructure Services are available in the Bluemix UI and provide details of available support options, as well as information on access, support business hours, severity classification, and support resources and limitations. IBM uses commercially reasonable efforts to respond to support requests; however, there is no specified response time objective for basic level support.

Unless otherwise agreed in writing, support is available only to Client (and its authorized users) and not to any end users of Client's solutions. Client is solely responsible for providing all customer support and services to its end users.

An online support forum is available at no charge at <https://developer.ibm.com/bluemix/> or on Stack Overflow at <http://stackoverflow.com/questions/tagged/bluemix>. IBM's development and support staff monitors both forums.

#### 5. Charges

Cloud Services will be charged on a pay-as-you-go basis unless Client purchases a subscription. Service charges and pricing metrics (the units measured by the service) will be identified in the Bluemix UI or may be defined in a Service Description. The following charging models apply:

- Charges for Platform Services are generally billed in arrears and begin when the service is available for use, or for services that need to be configured by IBM based on Client input, when the service would be available for use if Client provides timely input.
- Charges for Infrastructure Services are generally billed in advance and begin upon acceptance of Client's order.
- Charges for dedicated or local environments are generally billed in advance and will be based on the specified configuration. There are no usage charges for individual services executed within a dedicated or local environment. Components may indicate a specific configured capacity (such as gigabytes or transactions per second). Since actual capacity in practice for any configuration of the Cloud Service varies depending on many factors, the actual capacity in practice may be more or less than the configured capacity.
- Usage and overage charges are based on actual usage of the specified unit of measure, and billed in arrears. Partial usage is rounded up to the next full unit of measure.
- One-time charges for a particular activity will be billed upon acceptance of an order.

##### 5.1 Subscriptions

A Bluemix subscription provides a committed usage level over the selected subscription period for eligible services. Usage charges for services over and above the committed usage level will be billed as overage. To provide usage flexibility, subscription periods are divided into 12 month cycles (or if less than 12 months remain, the remaining number of months are a cycle). Usage credits that are paid in advance or are associated with that cycle can be used any time during that cycle for eligible services. Subscription overages will not be billed until all usage credits that are prepaid or are associated with that cycle are consumed. Usage credits unused at the end of a cycle are forfeit.

## **5.2 Trial Period**

Client's account may be eligible for a 30-day trial period during which charges for certain eligible services are waived. Client will be charged for use of other services Client orders. If Client has administrative authority over an account, Client may upgrade from trial to production at any time. If an account is not upgraded prior to the expiration of the trial period, services in that account will be disabled until the account is upgraded.

## **5.3 Billing**

Client will be billed charges each month by billing Client's credit card or, where available, by invoice for payment due by electronic funds transfer, or by such other method as approved by IBM.

By providing credit card information, including relevant personal data, Client agrees IBM can use such information to process payment of charges. Payment of charges will be automatic on the due date. Client is responsible to keep information current to avoid service disruption and a late payment fee of \$20 (or equivalent in local currency).

If Client believes a charge to be incorrect, Client must submit a support ticket within 30 calendar days from its due date. A credit will be provided upon validation of an incorrect charge. Client accepts billed charges for Cloud Services if not disputed within such period.

If Client requires specific funding authorization for IBM to invoice charges, such as a purchase order, Client is responsible to provide and keep such authorization timely and current with sufficient funding authorization to cover all orders submitted using Client's account credentials to avoid any service disruptions and late payment fee. Late payment fees are as specified in Client's invoice or Transaction Document.

## **6. Ordered Services Renewals**

### **6.1 Subscriptions**

Subscriptions automatically renew for the same term unless i) the order specifies it does not automatically renew or ii) Client provides 90 days' prior notice of its intent not to renew at the end of the subscription term.

### **6.2 Monthly Service Periods and Cancellation of Individual Services**

Monthly service periods begin on: i) for Platform Services, the first of each calendar month; or ii) for Infrastructure Services, the IBM established account billing date, or last day of the month if that date does not exist. For monthly Infrastructure Services, to downgrade or cancel a specific service, Client must cancel using the Bluemix UI at least 24 hours prior to the end of the monthly service period (in time zone GMT-6). A service can continue to be available until the end of such monthly period and no refund or credits are provided for any unused portion. Untimely notice will result in automatic renewal for another monthly service period. Client is responsible to monitor status of any request to cancel or downgrade a service to ensure it was successful.

## **7. Suspension and Termination**

### **7.1 Suspension and Termination of Individual Services**

Bluemix documentation may include usage guidelines or limitations to preserve the performance, responsiveness, or integrity of the Cloud Services. Client agrees to comply with such guidelines and understands that use or applications that violate these guidelines may be suspended automatically or by IBM system administrators.

Cloud Services may be suspended if IBM reasonably determines i) a security breach exists that affects Client or the IBM infrastructure, network, or its customers or ii) Client's use may subject IBM or third party service provider to liability. Client agrees to cooperate in any investigation to resolve a suspension. Suspension will only affect the services that caused or were the basis for the suspension.

IBM will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect IBM, third party service providers, or customers of either from operational, security, or other risk, or is ordered by a court or other judicial body.

For suspended services:

- a. Client remains responsible for all charges incurred through a suspension;
- b. Client is not entitled to any SLA credits for any period of suspension; and

- c. IBM is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension.

If IBM suspends access to a service due to a material breach of Client's obligations, IBM will not reconnect the services until Client pays a \$50 reconnection fee.

IBM may terminate a Cloud Service if a suspension is not remedied within five business days from the suspension notice (or other reasonable time as may be determined by IBM).

Instances of Platform Services that are unmodified and left running in a non-billable account for 10 or more days may be suspended automatically. Any Platform Service that Client has deployed but has not used for 45 or more days in a non-billable account may be deleted.

## 7.2 Account Termination

Upon initial account set-up, IBM will continue to process Client's account to validate contact, account, and payment information within the initial 14 days of account activation. During this initial period, IBM may close Client's account for any reason and discontinue access to Cloud Services. IBM may terminate Client's account for multiple violations of the Agreement terms or usage guidelines. IBM may close Client's account if no Cloud Services are ordered or remain active during any six month period.

## 8. General

### 8.1 Enabling Software

Enabling software may be provided by IBM to facilitate the use of the Cloud Service. Unless other terms are provided in a Service Description, Client may use the enabling software only in connection with use of the Cloud Service. If the enabling software contains sample code, Client has the additional right to make derivative works of the sample code and use them consistent with the above grant. The enabling software is provided subject to the applicable availability SLA, if any, but is otherwise provided AS IS.

### 8.2 Apple Licensed Applications

The following terms of use apply to any enabling software that runs, or is acquired from the Apple App store to run on, the Apple operating system (iOS). These terms are between Client and IBM and not with Apple. Apple is not responsible for the enabling software or the content thereof and has no obligation to furnish any maintenance or support services with respect to the enabling software.

These terms include the restrictions set forth in the App Store terms of service (<http://www.apple.com/legal/itunes/appstore/dev/stdeula/>) (Usage Rules).

If the enabling software fails to conform to any applicable warranty, Client may notify Apple, and Apple may refund any purchase price for the enabling software to Client; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the enabling software.

Apple is not responsible for addressing any claims Client or a third party may have relating to, or Client's possession and/or use of, the enabling software, including, but not limited to: (i) product liability claims; (ii) any claim that the enabling software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

Apple is not responsible for any third party claim that the enabling software or Client's possession and use of the enabling software infringes that third party's intellectual property rights.

Any questions, complaints or claims with respect to the Apple iOS enabling software may be emailed to [sales@softlayer.com](mailto:sales@softlayer.com).

### 8.3 Beta Services

Cloud Services provided as a beta or experimental service will be identified as such in the Bluemix UI and subject to the following, unless different terms are provided:

- A beta / experimental Cloud Service is provided without warranties of any kind and is provided so that Client may evaluate its functionality.
- A beta service may not be at a level of performance or compatibility of generally available services, is not fully tested, and may not comply with the normal Cloud Service security practices. Such services are not designed for use in a production environment and any such use is at Client's own risk. IBM does not guarantee it will make the beta service or any similar services generally available. If a generally available service is offered, IBM is under no obligation to offer migration capabilities or services.

- Client is responsible to pay any tax, levy, or any other charge associated with Client's use of the beta or experimental service.
- Client may use a beta service for the specified period or until IBM withdraws or terminates it. Client may terminate use of a beta service at any time. Client is responsible to remove content Client wishes to retain prior to expiration or termination of the beta service.
- IBM may suspend, limit use, change, or withdraw a beta service or change these terms without notice and at any time.
- If there are no charges, IBM's entire liability for all claims in the aggregate arising from Client's use of a beta service will not exceed the amount of any actual direct damages up to U.S. \$1,000.00 (or equivalent in local currency).
- If Client provides feedback to IBM or a third party service provider, Client agrees IBM or the third party owns and may use all feedback and suggestions provided.