

Complete Agreement: This Federal Cloud Services Agreement (FCSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this FCSA (together, the Agreement) under which Client may order Cloud Services which may consist of IBM Cloud Services or other labor based Services to support use of Cloud Service IBM provides (IBM Products) or cloud or other services a third party provides that Client acquires from IBM (Non-IBM Products). Cloud Services are commercial services under FAR 2.101 and offered to the Government under terms and conditions similar to those customarily provided to the public to the extent they do not conflict with federal law.

Documents: Transaction Documents (TDs) provide the specifics of transactions, such as charges and a description of and information about the IBM Products and Non-IBM Products . Examples of TDs include statements of work, service descriptions, task orders, ordering documents and invoices. There may be more than one TD applicable to a transaction.

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

In the event of a conflict, an Attachment prevails over this CSA and a TD prevails over both the CSA and any Attachment. Any conflicting terms in an Attachment or TD that override terms of this FCSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

- **IBM Cloud Services**
 - IBM Cloud Services are “as a service” IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, or infrastructure as a service or other network delivered services.
 - Each IBM Cloud Service is described in a TD.
 - IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.
 - Technical support and service level commitments, if any, are specified in an Attachment or TD.
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- **Non-IBM Products**
 - IBM may offer third party Cloud Services, or IBM Cloud Services may enable access to third party Cloud Services (Non-IBM Products).
 - A TD will identify any applicable third party terms that govern Client’s use of Non-IBM Products . Client agrees that any use of Non-IBM Products will be done with legally sufficient authorization.
 - IBM is not a party to any third party terms and is not responsible for Non-IBM Products.
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- **Order Acceptance**
 - Client accepts the applicable Attachment or TD for Cloud Services by ordering or otherwise entering into an authorized order, to include, enrolling, using, or making a payment when permitted.
 - IBM accepts Client’s order by confirming the order or enabling access.
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- **What IBM Provides**
 - IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services.
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- IBM provides generally available user guides and documentation to support Client's use of IBM Cloud Services.
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- **Enabling Software**

- 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 Service 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.**
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- **What Client Provides**

- Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
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- **Right to Use and Client Responsibilities**

- Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires.
 - Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
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- **Acceptable Use Terms**

- Cloud Services may not be used to undertake any activity or host Content that:
 - (1) is unlawful, fraudulent, harmful, malicious, obscene, or offensive;
 - (2) threatens or violates rights of others;
 - (3) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM;
 - (4) sends unsolicited, abusive, or deceptive messages of any type; or
 - (5) distributes any form of malware
 - Client may not use Cloud Services; i) for crypto-mining, unless otherwise agreed by IBM in writing; or ii. if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage.
 - Client may not:
 - (1) reverse engineer any portion of a Cloud Service;
 - (2) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise (as defined herein); or
 - (3) 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.
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- **Preview Cloud Services**

- Cloud Services or features of Cloud Services are considered "preview" when IBM generally 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.
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- 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 preview Cloud Services or make an equivalent service generally available.
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2. Content and Data Protection

- **Content Client Provides**
 - Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing other 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 or other services.
 - Use of the IBM Cloud Services or other Services will not affect Client's ownership or license rights in Content.
 - **Use of Content**
 - IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the applicable IBM Cloud Service or other Services.
 - IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or perform other Services.
 - **Client Responsibilities**
 - Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services or to provide other 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 or to provide other 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 or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services or provide or allow access of Content to IBM to provide Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access to IBM provide Services.
 - **Data Protection**
 - IBM Data Security and Privacy Principles (DSP), at <http://www.ibm.com/cloud/data-security>, apply for generally available standard IBM Cloud Services and other Services. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
 - 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.
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- Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use or the use of Content with other Services IBM will provide. Client acknowledges that the use of Cloud Services or other Services meets Client's requirements and processing instructions required to comply with applicable laws.
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- **IBM's Data Processing Addendum**

- IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>.
 - A DPA Exhibit will specify how IBM will process personal data contained in Content.
 - The 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); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply. Please contact your IBM representative for a copy of the DPA and DPL. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
 - 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 regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
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- **Removal of Content**

- 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, other 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 the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.
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3. Changes and Withdrawal of Cloud Services

- **IBM Right to Change Cloud Services**

- At any time and at IBM's discretion, IBM may change:
 - (1) the IBM Cloud Services, including the corresponding published descriptions; and
 - (2) 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:
 - (1) make available additional features and functionality;
 - (2) improve and clarify existing commitments; or
 - (3) maintain alignment to current adopted operational and security standards or applicable laws.
 - Changes will not 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.
 - (1) Any changes that do not meet conditions specified above will only take effect, and Client accepts:
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- (2) upon a new order or renewal order;
 - (3) notification from IBM of the change effective date for ongoing services
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- **Withdrawal of a Cloud Service**
 - Unless otherwise stated in a TD, IBM may withdraw an IBM Cloud Services on 12 months' notice.
 - IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering.
 - Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.
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4. Warranties

- **IBM Warrants**
 - IBM warrants that it provides IBM Cloud Services or IBM Services using commercially reasonable care and skill and as described in the applicable TD.
 - These warranties end when the IBM Cloud Services or other IBM Services end.
 - **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.**
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- **Warranty Limitations**
 - **IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services.**
 - **IBM does not warrant it will correct all defects.**
 - **While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access.**
 - **IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM.**
 - **IBM makes preview Cloud Services or Non-IBM Products under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.**
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5. Charges, Taxes, and Payment

- **Charges**
 - Client's right to use an IBM Product or Non-IBM product is contingent on Client paying applicable charges as specified in a TD or applicable agreement under which Client acquired the entitlements. Client is responsible to acquire additional entitlements in advance of any increase of its use.
 - Client agrees to pay all applicable charges and taxes specified in a TD in accordance with the Contract, including charges for use in excess of authorizations.
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- IBM shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3)
 - Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice receipt date to an account specified by IBM and late payment fees may apply under the Prompt Payment Act.
 - Prepaid IBM Products must be used within the applicable period.
 - IBM does not give credits or refunds for any, one-time charges, or other charges already due or paid, except as may be specified in an Agreement.
 - If IBM commits to pricing for Cloud Services as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing pursuant to the terms of the Contract.
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• **Withholding Taxes**

- If taxes are applicable, Client agrees to:
 - (1) pay any withholding tax directly to the appropriate government entity where required by law;
 - (2) furnish a tax certificate evidencing such payment to IBM;
 - (3) pay IBM only the net proceeds after tax; and
 - (4) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
 - Where taxes are based upon the location(s) receiving the benefit of the Cloud Services, 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.
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• **Invoicing**

- Unless otherwise stated in a TD, IBM will invoice:
 - (1) recurring charges at the beginning of the selected billing frequency term;
 - (2) overage and usage charges in arrears; and
 - (3) one-time charges upon IBM's acceptance of an order.
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6. Liability and Intellectual Property Protection

• **Liability for Damages**

- IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim.
 - **IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.**
 - These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
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• **What Damages are Not Limited**

- The following amounts are not subject to the above cap:
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- (1) third party payments related to in the infringement claims described in subsection c below;
 - (2) personal injury or death resulting from IBM's negligence.
 - (3) fraud by IBM; and
 - (4) damages that cannot be limited under applicable law.
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- **Infringement Claims**
 - If a third party asserts a claim against Client that the IBM Product infringes a patent or copyright, IBM will assist and defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM.
 - To obtain IBM's defense against and payment of infringement claims, Client must promptly:
 - (1) notify IBM in writing of the claim;
 - (2) supply information requested by IBM; and
 - (3) allow IBM such opportunity as is offered by applicable laws, rules, and regulations to participate in, the defense and settlement, including mitigation efforts of such claim; provided that such participation will be under the control of the Department of Justice.
 - IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open source code that IBM selects and embeds in an IBM Product .
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- **Claims Not Covered**
 - IBM has no responsibility for claims based on:
 - (1) Non-IBM Products;
 - (2) items not provided by IBM; or
 - (3) any violation of law or third party rights caused by Content, or any Client materials, designs, or specifications.
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7. Term and Termination

- **Term of a Cloud Service**
 - The term begins on the date IBM notifies Client that Client can access the Cloud Services.
 - The ordering TD will specify the term and whether and when the Cloud Services renew, proceed on a continuous use basis, or terminate.
 - For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the termination effective date.
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- **Suspension of an IBM Cloud Service**
 - Subject to the Contract Disputes Act for Federal Ordering Activities and Clause "552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019)" for Non-Federal Ordering Activities, IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a:
 - (1) material breach of Client's obligations;
 - (2) security breach;
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- (3) violation of law; or
- (4) breach of the Acceptable Use Terms.

- 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.
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- **Termination of Cloud Services**
 - Client may terminate an order according to the clauses included by a TD and pursuant to the rights within the Federal Acquisition Regulation.
 - Subject to the Contracts Disputes Act, IBM may terminate this FCSA for cause if Client is in material breach of this Agreement. Failure to pay applicable charges is a material breach.
 - Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
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- **Termination of this FCSA**
 - Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
 - Termination of this FCSA does not terminate TDs, and provisions of this FCSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.
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8. Governing Laws and Geographic Scope

- **Compliance with Laws**
 - Each party is responsible for complying with:
 - (1) laws and regulations applicable to its business and Content; and
 - (2) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdictions, that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
 - IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of a Cloud Service from a country outside Client's business address.
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- **Enforcement and Other Rights**
 - This FCSA is governed by U.S. Federal law.
 - If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect.
 - Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract.
 - The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.
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9. General

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- **IBM's Role**
 - IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary.
 - IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of Cloud Services.
 - 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.
 - Each party is responsible for determining the assignment of its and its affiliates personnel, and their respective contractors, and for their direction, control, and compensation.
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- **FCSA Changes**
 - In accordance with federal law, IBM may change the non-material terms and conditions of this FCSA. IBM will provide at least three months' notice prior to changing this FCSA.
 - FCSA changes are not retroactive. They will only apply as of the effective date to:
 - (1) new orders;
 - (2) continuous Cloud Services that do not expire; and
 - (3) renewals.
 - For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period.
 - Client accepts non-material changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice.
 - Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.
 - Any material updates to this FCSA shall be presented to Client for review and will not be effective unless and until both parties sign a written agreement updating these terms.
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- **Business Conduct**
 - IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud.
 - IBM and its personnel comply with such policies and require contractors to have similar policies.
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- **Business Contact and Account Usage Information**
 - 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, user ID, and tax registration information.
 - Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital
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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. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
 - 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.
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• **IBM Business Partners**

- IBM Business Partners who use or make available IBM Products or Non-IBM Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
 - If IBM notifies Client their current IBM Business Partner will no longer resell Cloud Services, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.
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• **Assignment**

- Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other.
 - IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations.
 - IBM may share this Agreement and related documents in conjunction with any assignment.
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• **Enterprise**

- This FCSA applies to IBM and Client (accepting this FCSA) and the respective Enterprises.
 - Client's Enterprise means the Government agency, department, bureau, division, or office identified in a TD that is authorized to access a Cloud Service.
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• **Notices and Administration**

- All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address.
 - The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing.
 - Any reproduction of the Agreement made by reliable means is considered an original.
 - The Agreement supersedes any course of dealing, discussions, or representations between the parties.
 - Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
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• **Cause of Action**

- No right or cause of action for any third party is created by this FCSA or any transaction under it.
 - Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
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- Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.
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- **Global Resources**

- IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Products and Non-IBM Products.
 - Client's use of the Cloud Products and Non-IBM Products may result in the transfer of Content, including personal data, across country borders.
 - A list of countries where Content may be transferred and processed is described in the applicable TD or support documentation.
 - 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.
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- **Use of Client Requested Third Party Service**

- If IBM and Client agree to use a Client requested third party service to support the procurement or payment activities associated with an Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third party service.
- In the event: i) the third party service becomes unavailable for any reason; or ii) the third party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents.
- Client remains responsible to IBM for timely payments of invoices.
- If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third party service, IBM reserves the right, subject to the Contract Disputes Act, to seek reimbursement from the Client for reasonable costs and amounts IBM is required to pay associated with such claims or proceedings. This includes claims or proceedings due to the third party service provider's use, misuse, or disclosure of data or confidential information disclosed through the third party service or the third party's failure to comply with applicable data protection laws. IBM agrees to promptly notify Client in writing of any such claim or proceeding.



IBM Cloud for Government

This Service Description describes IBM's Cloud for Government available to Clients under the Federal Cloud Service Agreement. Client means the contracting party and its authorized users and recipients of the Cloud Service.

Cloud Services

IBM Cloud for Government includes Infrastructure Services that allow Client to deploy selected services and Client content, including Client applications and data, within IBM's Cloud for Government public Cloud for Government offering environment. Cloud for Government also supports Client's hybrid cloud strategy with Cloud for Government 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.

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

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.

Cloud for Government User Interface (UI)

Upon IBM's acceptance of Client's Purchase Order or other authorized contract or funding document, IBM will activate a Cloud for Government Services account to enable Client's order and manage available Cloud Services via the Cloud for Government using the standard procedures via the on-line Cloud for Government Portal, or, if applicable, set-up of the dedicated or local environment. Client can use the Cloud for Government 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 Cloud for Government UI, support, and other information may be presented only in English and English 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.

The "Effective Date" for a Cloud Services or any upgrade is when the order is accepted by IBM. You will receive notice of acceptance through the Portal. Upon acceptance, the Portal ticketing system will initiate or change Cloud Services based upon Client's selections and Client may begin using the Cloud Services, including creating or uploading content.

Client is responsible for monitoring the term and funding allocated on Client's current Purchase Order or Contract and issue a modification prior to the term expiration or depletion of funds to continue to use the Cloud Services. All Cloud Services continue until funds are depleted or the term ends on the governing Purchase Order or Contract, or until cancelled by you or upon termination.

Cloud Service Use

Specific services and offerings within Cloud for Government 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 Cloud for Government 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 Cloud for Government 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 should review the additional or third party terms before placing an order or deploying the service. Do not place an order if you do not agree or have the authority to agree with the applicable TPA Agreement terms.

IBM will provide Client at least 30 days' notice in the Cloud for Government UI of any changes to Service Descriptions or Attachments or of the withdrawal of a particular service. Any renewal would constitute the Client's acceptance of the changed 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 Cloud for Government UI, IBM will not withdraw the service without making a functional equivalent available or provide in at least five years' notice of the withdrawal.

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 Infrastructure Services on a regular basis during scheduled maintenance windows as published in support documentation available from the Cloud for Government 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 as scheduled in advance, with reasonably current with the public instances.

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.

Network Access

Infrastructure Services connect to the Cloud for Government 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 Cloud for Government documentation (available in the Cloud for Government 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 in the UI) 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 Cloud for Government 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.

Security Description Policies

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. The Federal Cloud for Government Cloud Services provided via our Federal Data Centers are FISMA moderate and FEDRAMP compliant. 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.

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 <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud> applies, except to the extent that such agreement is superseded by U.S. Federal law or regulation.

Access to the Cloud for Government 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 <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud>.

Service Level Agreements

IBM provides service level agreements (SLAs) for IBM-branded Cloud for Government services. Service levels based on downtime do not include time related to exclusions, Cloud for Government 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 servicelevel.

IBM will validate SLA claims based upon information provided and IBM system records. IBM will provide Cloud for Government 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%.

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 Cloud for Government 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 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 Cloud for Government 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.

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 Cloud for Government 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.

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 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.

Technical Support

IBM provides basic level support at no additional charge for the Cloud Services. Advance support is included as part of a Cloud for Government 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 Infrastructure Services are available in the Cloud for Government 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.

Charges

Cloud Services will be charged on a pay-as-you-go basis unless Client purchases a subscription. Client is responsible to provide and keep a funding document timely and current with sufficient funds to cover the term so as not to interrupt Cloud Service. Service charges and pricing metrics (the units measured by the service) will be identified in the Cloud for Government UI or may be defined in a Service Description. The following charging models apply:

- Monthly Charges for Cloud Services are generally billed in arrears and begin upon acceptance of a funding document (Purchase Order or Contract) and 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 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.
- Charges will continue monthly until Client submits a cancellation ticket for the Cloud Service, the funding is depleted on the funding document (Contract, Purchase Order), the term has ended on the governing Purchase Order or Contract, or upon any termination of the Cloud Service.

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.

Billing

Client will be billed charges each month, by invoice, for payment due in accordance with the Prompt Payment Act.

Ordered Services Renewals

Monthly Service Periods and Cancellation of Individual Services

Monthly service periods begin for Infrastructure Services on: 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 Cloud for Government 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 Client will be billed for any usage until the service is cancelled within the system Client is responsible to monitor status of any request to cancel or downgrade a service to ensure it was successful.

Suspension and Termination

Suspension and Termination of Individual Services

The term for a Cloud Service will start on the “Effective Date” and continues until funding is depleted, the term has ended on the governing Purchase Order or Contract, Client submits a cancellation order, or upon any termination of the Cloud Services.

Suspension and Termination

IBM may suspend Cloud Services without liability as set forth in the Agreement if IBM reasonably determines: i) a security breach affecting Client or Cloud for Government infrastructure, network, or other customers; ii) a violation of law; or iii) Client’s use may subject Cloud for Government, IBM or a Cloud for Government third party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a suspension. IBM will only suspend the Cloud for Government Services causing, or the basis for, a 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 Cloud for Government or its customers from operational, security, or other risk, or if ordered by a court or other judicial body.

If use is suspended for all or any portion of the Cloud Services, for the service that is suspended:

- a. Client remains responsible for all charges incurred for any Cloud Services Client has continued access during or after a suspension;
- b. Client is not entitled to any SLA Credits for any period of suspension; and
- c. IBM or Cloud for Government is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension

Client may cancel or terminate a Cloud Service at any time as described in the section titled Cloud Service Order.

Client instructs IBM to delete content upon expiration, cancellation, or termination, and Client understand that deletion is automatic and content is not recoverable. Client must discontinue use of the Cloud Services on such effective date, and relinquish use of IP addresses, infrastructure and all other materials provided in connection with the Cloud Services, including pointing the Domain Name System (DNS) for Client’s domain names away from the Cloud Services.

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 suspend Client's account as specified in Section 7.1. IBM may terminate Client's account for multiple violations of the Agreement terms in accordance the Contract Disputes Act process. IBM may close Client's account if no Cloud Services are ordered or remain active after the term of the Purchase Order or Contract expires.

General

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.

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 CloudDigitalSales@us.ibm.com.

Beta 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.

*** END OF SERVICE DESCRIPTION ***