

IBM Cloud Services Agreement

This Agreement governs your acquisition and use of IBM Cloud Services. You may select Cloud Services either on-line or through an Order Document IBM provides. The Order Document you submit to IBM will specify the Cloud Services and quantities selected, IBM charges and other details of your order. The Order Document, the Service Description(s) for the selected Cloud Service(s) and this Agreement will constitute the complete agreement for the Cloud Services and will supersede any prior discussions or representations regarding the Cloud Services. Any reproduction of this Agreement made by reliable means is considered an original.

Service Performance and Commitments

When IBM accepts your Order Document for a Cloud Service, IBM will provide you the entitlements specified in the Order Document. You may access the Cloud Service from any location via a network connection. Cloud Services are designed to be available 24/7 subject to maintenance. You will be notified of scheduled maintenance. Service Level commitments, if applicable, are specified in the Service Description. In addition, some Cloud Services include entitlement to use enabling software on your machines. If applicable, descriptions and details of the software and permitted use granted by IBM or third parties will be included in the Service Description.

You may access and use each Cloud Service that you order only to the extent of entitlements acquired by you. You are responsible for use of Cloud Services by any party who accesses the Service with your account credentials.

IBM does not authorize use of any Cloud Service for any unlawful or inappropriate purposes, such as gambling, obscenity, pornography, violence, misappropriation, unauthorized access or interference, viruses or harmful code, harassment, unsolicited or deceptive messages, or evading filters. Any such use is prohibited. Unless expressly provided in this Agreement, you are not authorized to use the Cloud Services to provide hosting or timesharing services to any third party.

Integration, Configuration and Custom Services

IBM may offer additional standard customization and configuration Services. Such Services are detailed in an additional Service Description and may be ordered pursuant to the Order Document. At your request, IBM may perform additional custom services, as specified in a mutually agreed Statement of Work.

Confidentiality and Data Protection

Each Cloud Service is designed to protect the proprietary content that you input into the Cloud Service and to provide for access and use of such content only in accordance with the provision of the Cloud Service. Except as otherwise specified in a Service Description, Cloud Services limit access and use of your proprietary content to IBM employees and contractors as needed to deliver the Cloud Service. IBM will not disclose your proprietary

content, and will return or destroy your content upon the expiration or cancellation of the Cloud Service, or earlier upon your request. IBM reserves the right to charge for certain activities performed at your request or direction (such as delivering content in a specific format).

The Service Description for each Cloud Service describes the security functions and features applicable to the Cloud Service. IBM Cloud Services comply with the US-EU and US-Swiss Safe Harbor Frameworks, unless otherwise specified in the Service Description. IBM agrees to provide you notice of any unauthorized third party access to your content of which we become aware and to provide reasonable efforts to remediate identified security vulnerabilities. If your content is lost or damaged, IBM will assist you in restoring the content to the Cloud Service from your last available back up copy in compatible format.

Some of your content or other data may be subject to governmental regulation or otherwise may require security measures beyond those specified by IBM for the Cloud Service. You agree not to input such content in the Cloud Services or to otherwise provide such data in conjunction with other Services unless we have first agreed in writing to provide additional required security measures. You are responsible for all necessary permissions to include the content in the Cloud Service and you grant IBM permission to use, store and process the content in the delivery of the Cloud Services.

Charges, Payments & Taxes

You agree to pay all applicable charges for a Service as set forth in the Agreement and any charges for use in excess of entitlements, any custom, duty, tax (including withholding tax), levy or fee imposed by any authority resulting from your purchase or use of a Service, and any late payment fees. Unless specified otherwise in an Order Document, amounts are due upon receipt of the invoice and payable electronically within 30 days of the invoice date to an account specified by IBM.

Changes

IBM may modify the computing environment used to provide a Cloud Service, provided that such change does not degrade the functionality or the security features of the Cloud Service. Other changes to the Service Description made by IBM will not apply until any agreed renewal or extension.

Term, Termination, Suspension

The **term** of a Cloud Service is **described** in the Service Description or Order Document. Any renewal terms for a Cloud Service will be as **otherwise** specified in the Service Description or Order Document. IBM may withdraw a Cloud Service on 12 months' notice, or as specified in the Service Description, and IBM will either **continue to provide** the Cloud Service for the remainder of your unexpired term or work with you to **migrate** to another IBM **Service**. IBM may suspend, **revoke** or limit use of a Cloud Service if **in IBM's sole discretion** there is a breach of security, **breach** of your obligations under the Agreement or **violation** of law. Charges will continue to accrue for the Cloud Service during any **suspension**. If the cause of the suspension **is reasonably capable of being remedied**, IBM will **provide you notice** of what actions you must take to reinstate the Cloud Service. If you fail to take **such** actions within a reasonable time, IBM may terminate the Cloud Service.

Liability and Indemnity

IBM's **entire** liability for all claims **in the aggregate** arising from your use of a Cloud Service **acquired hereunder** will not exceed the amount of any **actual direct damages** up to the **amounts paid** in the prior 12 months for the Cloud Service that is the **subject of the claim**, regardless of the basis of the claim. This limit applies **collectively** to IBM, its **subsidiaries and contractors**. IBM will not be liable for **special, incidental, exemplary, indirect or economic consequential damages, lost profits, business, revenue, goodwill, or anticipated savings**.

If a **third party** asserts in a **litigation** against you that a Service **acquired hereunder** infringes that party's patent or copyright, IBM will defend you against that claim and pay damages that a court **finally awards against you or that are included in a settlement approved by IBM**, **provided that** you promptly notify IBM in writing of the claim, supply information requested by IBM, and allow IBM to control the defense and settlement. IBM **reserves the right to modify or replace the Service with an equivalent non-infringing one or, if replacement is not**

reasonably available, to discontinue the Cloud Service and provide a credit for any **pre-paid unexpired term**. IBM **has no liability** for claims that include, in whole or part, **items not provided** by IBM. You are responsible for any **violation** of law or any **third party rights caused** by your content or, except as provided in this paragraph, your use of the Service.

Warranties and Disclaimers

IBM **warrants it** will provide the Cloud Service using **commercially reasonable care and skill in accordance with the Services Description**. The **warranty period is the term of the Service**.

IBM does not warrant uninterrupted or error-free operation of a Cloud Service. These warranties are the exclusive warranties from IBM. They replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

Compliance with Laws

Each party **remains** responsible for complying with laws, rules and regulations **applicable to its business, use of a Cloud Service, and content**, including applicable export and import laws. A Cloud Service is delivered in, and the choice of forum and law (without regard to conflict of laws) is the country and state in which you ordered the Cloud Services.

General

IBM may use **global resources** (personnel, affiliates, and resources in locations worldwide) and **third party suppliers** to support the delivery of Cloud Services. **Assignment of this Agreement and the rights and obligations under it, including entitlements to the Cloud Service, is not permitted** except to a subsidiary or to a successor organization by merger or acquisition. Assignment by IBM in conjunction with the sale of the portion of IBM's business that includes the Cloud Service **is not restricted**.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. **IBM is not responsible for their actions, statements or the offerings they provide under their agreements.**

Agreed to:

Agreed to:

By _____

By _____

Authorized signature

Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Client address:

IBM Company address:

After signing, please return a copy of **this Acceptance Document** to the "IBM Company address" shown above.