



**APPENDIX T. IBM FEDERAL CLOUD SERVICES AGREEMENT (FCSA)**

---

**APPENDIX T. IBM FEDERAL CLOUD SERVICES AGREEMENT (FCSA) ..... 1**

CLOUD SERVICES ..... 1

DATA PROTECTION ..... 2

CHANGES ..... 3

WARRANTIES ..... 3

CHARGES, TAXES, AND PAYMENT ..... 3

LIABILITY AND INDEMNITY ..... 4

TERMINATION ..... 4

GOVERNING LAWS AND GEOGRAPHIC SCOPE ..... 5

GENERAL ..... 5

COMMERCIAL CLOUD SERVICES ..... 6

GOVERNMENT RIGHTS ..... 6

---

## APPENDIX T. IBM FEDERAL CLOUD SERVICES AGREEMENT (FCSA)

---

This Federal Cloud Services Agreement (FCSA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under this FCSA (together, the “Agreement”) under which Client may order Cloud Services. Attachments typically contain additional terms that apply to similar types of offerings. TD’s, such as service descriptions, order documents or statements of work, contain specific details related to an order for a Cloud Service and there may be more than one TD providing details of an order. In the event of conflict, an Attachment prevails over this CSA and a TD prevails over both the CSA and any Attachment.

### CLLOUD SERVICES

A Cloud Service is an IBM branded offering provided by IBM and made available via a network. Each Cloud Service is described in an Attachment or a TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

Client accepts an Attachment or TD by issuing a Purchase Order, enrolling, or using the Cloud Service. When IBM accepts Client’s order, IBM provides Client the authorizations specified in the TD. The term, including any Contract options for a Cloud Service is described in the Client Purchase Order or Contract.

IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client’s use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client may be responsible for use of Cloud Services by any user who accesses the Cloud Service with Client’s account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, in addition to any rights under the Contracts Disputes Act. . Client may not i) resell direct access to a Cloud Service a third party outside Client’s Enterprise; or ii) combine Cloud Services with Client’s value add to create a commercially available Client branded solution for which Client charges a fee.

**Enterprise** – the agency or affiliated entity of the Government awarding a contract and subsequent Order under such contract. This Government Customer is the legal entity that is authorized to execute and administer the contract.

## CONTENT AND DATA PROTECTION

- a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service. Use of the Cloud Service will not affect Client's existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in the TD.
- b. Client is responsible for obtaining all necessary rights and permissions enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Cloud Service. This includes Client making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input, provide, or allow such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.
- c. Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
  - a. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.
  - b. Each Cloud Service is designed to protect Content as described in the Agreement. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at <http://www.ibm.com/cloud/data-security>, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions.

- c. Client acknowledges that i) IBM may modify the DSP from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to the DSP will materially degrade the security of a Cloud Service.

## CHANGES

IBM may modify a Cloud Service, without degrading its functionality or security features.

IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM offering .

Changes to the Agreement must be in writing and accepted by both parties Changes are not retroactive; they apply, as of the effective date, only to new orders and renewals.

## WARRANTIES

IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

IBM does not warrant uninterrupted or error-free operation of a Cloud Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. 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. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM services are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

## CHARGES, TAXES, AND PAYMENT

IBM will invoice Client all applicable charges specified for a Cloud Service including charges for use in excess of authorizations. . Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) 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 Service, 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.

## LIABILITY AND INDEMNITY

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. Nothing in this section shall limit the Government's right to (i) excess re-procurement costs in the event of a Termination for Default; or (ii) the contractual remedies prescribed under the Price Reductions clause(GSAR 552.238-75) and GSAR 552.215-72, Price Adjustment – Failure to Provide Accurate Information. This limit applies collectively to IBM, its subsidiaries, contractors, subprocessors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will indemnify the Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, and (ii) gives IBM such opportunity as is offered by applicable laws, rules and regulations to participate in the defense thereof. The Client shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice. IBM has no responsibility for claims based on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by Client's Content, materials, designs, or specifications.

## TERMINATION

IBM may suspend or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law, in addition to any rights under the Contracts Disputes Act. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service.

Client may terminate an order by providing IBM on one month's written notice. 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 agreement does not terminate TDs, and

provisions of this agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.

### **GOVERNING LAWS AND GEOGRAPHIC SCOPE**

Each party is responsible for complying with: i) laws and regulations applicable to its business and Content, and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and non-IBM products and services.

If Client or any user exports or imports Content or us of any portion of the Cloud Service outside the US, IBM will not serve as the exporter or importer.

This agreement 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.

### **GENERAL**

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse; anti-bribery & corruption; and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

Account Data is information Client provides to IBM, other than Content, about Client or its users that IBM needs to enable Client's use of a Cloud Service or information concerning such use. IBM, its contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service as described in IBM's Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/>.

IBM Business Partners who use or make available IBM Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

Assignment of IBM rights to receive payments is not restricted.

All notices under the Agreement must be in writing and sent to the address identified in the Contract, 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.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

## COMMERCIAL CLOUD SERVICES

Cloud Services are commercial services available in the commercial marketplace and customarily used by the general public or by non-government customers for other than government purposes and have been “offered for sale, sold, leased, or licensed to the general public” in substantial quantity. The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government herein

**Ownership of Site:** A Cloud Site is the combination of computer software, computer hardware, intellectual property, other forms of property, facilities, and infrastructure provided by IBM to enable the delivery of Cloud Services. IBM (or its licensors) own all legal right, title and interest in and to the Cloud Site and the Cloud Services provided by IBM, including, without limitation, any intellectual property or other proprietary rights which subsist in the Cloud Site and Cloud Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). All materials on the Cloud Site, including, but not limited to, graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Site and its content (except for your content), and the domain names, trademarks, service marks, proprietary logos and other distinctive brand features found on the Cloud Site, are all owned by IBM or its licensors.

## GOVERNMENT RIGHTS

IBM provides the Cloud Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Cloud Services include only those rights customarily provided to the public under the terms of IBM’s commercial license. This customary commercial license is provided in accordance with the Federal Acquisition Regulation (“FAR”) at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement (“DFARS”) at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

## European Union General Data Protection Regulation (GDPR)

The European Union passed the General Data Protection Regulation (EU/2016/679) (GDPR), effective 25 May 2018. The GDPR is designed to ensure a consistent level of protection of the rights and freedoms of natural persons with regard to the processing of their data and to establish one set of data protection rules for Personal Data. IBM is committed to GDPR readiness.

Regarding GDPR, you represent as follows:

- a. Either you do not require IBM to process Personal Data within the meaning of GDPR (e.g., because no processing of Personal Data occurs in the European Union (EU); no monitoring of Personal behavior takes place in EU; or your activities are otherwise exempt from GDPR); and you will communicate to IBM in writing, without undue delay, any anticipated change affecting this representation, or
- b. You agree to IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit, which apply and supplement the contract. Please contact your IBM representative for the applicable Data Processing Exhibit.





|