



Attachment for Embedded Solutions for Cloud Services-Build with IBM Startup Program

Client may be referred to as "Business Partner" or "BP" under the terms of this Attachment for Embedded Solutions for Cloud Services ("Attachment") and for its embedded use. The terms of this Attachment are limited to, and subject to, BP's use of the IBM Cloud Services as part of the Build with IBM and Startup with IBM Program. Any other use of IBM Cloud Services requires additional terms.

Under the terms of this Attachment to the CSA between BP and IBM BP must combine a Cloud Service with BP's value add to create a commercially available BP branded solution, subject to approval by IBM, which is distinct from the Cloud Service and adds significant new functionality or capability to the Cloud Service (Embedded Solution) in accordance with the terms herein. For the avoidance of doubt, providing only installation or implementation services or hosting the Cloud Service alone is not considered significant new functionality or capability and does not constitute Value Add. The terms of this Attachment are hereby incorporated into the CSA. In the event of a conflict between the terms of the CSA and this Attachment, the terms of this Attachment shall prevail for the embedded use contemplated herein.

Unless otherwise provided or prohibited by law, BP may access, use or market worldwide (through whatever channels it chooses) a Cloud Service in each case as part of an Embedded Solution for use by End Users (as defined below) in accordance with the terms herein. All End User data and other content associated with the Embedded Solution that is processed by the Cloud Service will be considered Content.

End Users are BP's end users authorized to use the Embedded Solution for its intended use and not for remarketing and do not include BP, BP's parent company, Affiliates (as defined below), BP's other subsidiaries, or any company which shares common ownership with BP. All internal use of the Cloud Service acquired by BP shall be subject to terms of the CSA. Affiliates are any legal entity that, directly or indirectly, is controlled by BP but only for so long as such control exists. For this purpose, "control" means the possession, direct or indirect, of more than 50% of its voting stock, or if not voting stock, decision making power.

When making the Embedded Solution available to End Users, BP must supply BP's end user agreement (and not an IBM one) stating End User's use authorizations and other terms and conditions under which End User is authorized to use the Embedded Solution (End User Agreement). The End User Agreement must be contractually binding on End Users.

BP's End User Agreement will also: (i) limit liabilities to a reasonable amount; (ii) state expressly that BP's third party suppliers disclaim any and all liability for consequential and other indirect damages and implied warranties, including the implied warranties of non-infringement, merchantability and fitness for a particular purpose; (iii) state that the collective liabilities of BP and its third party suppliers are subject to the limitation of liability in the End User Agreement; and (iv) when BP makes the Embedded Solution available to End Users, state that End User is not authorized to use the IBM Product separately from the Embedded Solution. As between BP and IBM, BP is responsible for End User's compliance with the terms of BP's End User Agreement and for use of the IBM Product by End Users in excess of use authorizations.

BP is responsible for all uses of the Embedded Solution. BP will ensure anyone accessing, using or marketing Cloud Services as part of the Embedded Solution does so only in compliance with the terms of the Agreement. BP remains liable to IBM for any noncompliance of such terms and any such access, use or marketing. If a third party asserts a claim (including any claims for government imposed fines or penalties) against IBM arising out of, or related to: (i) the marketing, distribution or use of an Embedded Solution or any Content; (ii) any breach or alleged breach of the Agreement or any agreement BP has with the End User or any downstream seller; or (iii) any acts or omissions of BP, BP will defend IBM against that claim and pay amounts finally awarded by a court against IBM or included in a settlement approved by BP, provided that IBM promptly: (1) notifies BP in writing of the claim; (2) supplies information requested by BP; and (3) allows BP to control, and reasonably cooperates in, the defense and settlement. Payments related to the obligations of this paragraph shall not be subject to the limitation of liability provisions set forth in the CSA.

BP is responsible to provide all support for the Embedded Solution and to provide any required notifications to its end users and downstream sellers (i.e., a distributor, solution provider, integrator or reseller in BP's distribution chain). BP may not use the Cloud Services acquired under this Attachment or the Embedded Solution for internal use within BP's Enterprise. No intellectual property rights are granted or transferred hereunder.

BP will, and ensures that all downstream sellers will: (i) comply with all applicable laws and regulations, including, without limitation, the US Foreign Corrupt Practices Act, and all other laws and regulations prohibiting corruption and bribery; (ii) have and maintain throughout the term of this Attachment business controls to support such compliance (which includes, among other things, applying a process for evaluating the integrity and role of downstream sellers in its distribution chains, to ensure lawful conduct); and (iii) keep and maintain throughout the term of the Attachment and for at least two years thereafter, all transaction documents and records related to such compliance and controls.

BP will maintain, and provide upon request, records and other requested end user transaction and usage data and downstream seller records, and reasonable assistance for IBM and its independent auditor to verify BP's compliance with the Agreement. These obligations remain in effect during the term of this Attachment and for two years thereafter.

BP will not, and ensures that all downstream sellers will not, directly or indirectly make or give, offer or promise to make or give, or authorize the making or giving of any payment, gift, or other thing of value or advantage (including, for example, accommodations, airfare, entertainment or meals) to any person or entity for the purpose of wrongfully influencing decisions or for any other purpose that is otherwise unlawful. IBM may terminate the Agreement immediately in case of a breach of this subsection or when IBM reasonably believes such a breach has occurred or is likely to occur.

BP will comply with the IBM Code of Conduct, a current version of which is available at https://www.ibm.com/partnerworld/page/pw_com_jnw_code_conduct; BP will provide prompt written notice (unless precluded by law or regulation) of any change or anticipated change in BP's business structure (for example, a material change in equity ownership or management).

Each party will enter into any additional agreement as required by law in the prescribed form for the protection of personal or regulated personal data included in Content: i) as a subprocessor of BP; or ii) directly with end user data controller subject to end user agreeing to appropriate limitations and exclusions of liability.

BP shall delete or return Content, including end user's data upon end user request or at the expiration of end user's use of the Embedded Solution. IBM will assist BP to the extent BP provides necessary information to identify applicable Content and IBM has appropriate access to such Content.

Service Description:

The following terms and conditions shall prevail over the Service Description:

- A. References to "you" or "Client" in the Service Description(s) shall mean BP and not End User. References to "Order Document" in the Service Description(s) shall mean this TD.

- B. IBM's Data Processing Addendum for Business Partners at <https://www.ibm.com/partnerworld/bpdpa> (BP-DPA) and applicable DPA Exhibit(s) referenced in the applicable Service Description(s) apply to personal data contained in Content, if and to the extent: (i) IBM is processing personal data on behalf of BP's End Users acting as BP's subprocessor; and (ii) the European General Data Protection Regulation (EU/2016/679) (GDPR) or other data protection laws identified at <http://ibm.com/dpa/dpl> apply. In such case, references to the DPA at <http://www.ibm.com/dpa> in the Agreement shall be superseded and replaced by references to the BP-DPA. To the extent legally required, BP shall enter into data processing agreements with End User(s) that contain substantially similar terms and conditions as the BP-DPA. BP must obtain sufficient consent and authorization from End Users prior to providing personal data to IBM and engaging IBM and its contractors.

Support Responsibilities:

Technical support for Cloud Services is described in the Service Description ("Technical Support"). IBM provides Technical Support to BP and not to End Users.

BP will develop a service plan to enable convenient, efficient, and timely support of Cloud Services it markets as an Embedded Solution. The service plan will include, but not be limited to, (i) maintaining a support process adequate to support the latest release of and provide service for all Cloud Services for which BP provides services, (ii) an escalation process, (iii) identification and maintenance of qualified technical support personnel and mutually-agreed resource commitments, management contacts, and support location(s), and (iv) logging and reporting procedures for BP's service activities.

BP will provide Level 1 Support which means BP will be the initial contact for all service requests from End Users regarding the Embedded Solution. BP will only refer requests to IBM through BP's designated technical support personnel and processes after BP 1) validates that the Cloud Service is eligible for support and 2) performs its respective responsibilities.

When billed each month, IBM will add to the charges for services ordered, any custom, duty, tax (including withholding tax), levy or fee imposed by any authority resulting from the BP's acquisition or use of the Cloud Services. IBM reserves the right to defer invoicing of any small monthly bill and add it to a subsequent monthly invoice.

BP agrees that the price presented to the End User for the Embedded Solution will be a single fee for both the Cloud Service(s) and the Value Add. BP may not refer to a separate price for the Cloud Service(s).

The following Cloud Services are not eligible for ESA and may not be acquired by BP: Any Facial Recognition Application, i2 products (any in the suite, including Analyst's Notebook and Enterprise Insight Analysis), Maximo Visual Inspection, PowerAI Vision, QRadar Incident Forensics (QRIF), Video Analytics, Video Explorer Platform, Vision Builder, Vision Insights.

Termination- Both parties may terminate this Attachment by giving the other party not less than 60 days written notice. Upon termination, BP will pay to IBM the charges for Cloud Services IBM provides through termination and all costs and expenses IBM incurs in terminating the Cloud Services.

For clarity, any changes or modifications to services as provided in the IBM Cloud SD shall also apply to the services provided under this Attachment.