

## Chapter 7 Client Relationship Agreement Services – US Federal Government



This Client Relationship Agreement for Services (CRA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CRA (together, the "Agreement") under which Client may order Services and third-party services.

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

Attachments provide supplemental terms that apply to certain types of IBM Products and Non-IBM Products.

In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment and will only apply to the specific transaction.

### 1. Services

- a. Services are project or other labor-based Services, such as consulting, installation, customization and configuration, maintenance, Program support, and remote services IBM provides to Client. When IBM accepts Client's order, IBM will provide or make the Services available as described in an Attachment or TD.
- b. Services to support and maintain Products and applicable Non-IBM Products are described in IBM's Support Guide at [www.ibm.com/support/pages/node/733923](http://www.ibm.com/support/pages/node/733923) and applicable terms in an Attachment, TD or as available under separate agreement.

#### 1.1 Service Deliverables Ownership and Licensing

- a. When IBM provides deliverables, Client will own the copyright in works of authorship that IBM develops for Client as described in a TD (Project Materials). Project Materials exclude Existing Works. Existing Works are works of authorship delivered to Client, but not created, under the SOW, and includes any modifications or enhancements of such works made during the performance of the Services. Some Existing Works may be subject to a separate license agreement (Existing Licensed Works). An IBM Program is an example of an Existing Licensed Work and is subject to its Program terms.
- b. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.
- c. Acceptance of IBM services occurs when IBM completes the services as defined in the completion criteria stated in the Statement of Work, or for hourly service engagement, upon completion of the service hours identified in the Statement of Work.

#### 1.2 Services Termination

- a. Subject to the Contract's Disputes Act, IBM may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time.
- b. IBM will provide at least 90 days' notice prior to withdrawal of standard Services offerings.
- c. Client will be invoiced for charges for Services provided through the effective date of termination.
- a. If Client terminates without cause or IBM terminates for breach, Client will:
  - (1) meet all minimum commitments;
  - (2) IBM will invoice for adjustment charges specified in the SOW or TD; and
  - (3) any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or resource relocation.IBM will take reasonable steps to mitigate any such additional costs.
- b. Specific termination rights for a Service may be specified in a TD.

### 2. 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 a Cloud Service or 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 Services. Use of the Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Services. IBM will treat all Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the Services.

- c. Client is responsible for obtaining all necessary rights and permissions to permit processing to provide the Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to or inputs individuals' information, including personal or other regulated data for use by IBM in providing the Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the Cloud Services or provide or allow access of Content to IBM to provide other 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 of Content to IBM to provide Services.
- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally available Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of a Service will be described in the applicable Attachment and TD. Client is responsible for assessing the use of Content with the Services IBM will provide. Client acknowledges that the Services meet Client's requirements and processing instructions required to comply with applicable laws.
- g. IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client.
- h. If IBM stores any Content on IBM computing resources, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the 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 backup files until expiration of such files as governed by IBM's backup retention practices.

### 3. Warranties

- a. IBM warrants that it provides Services using commercially reasonable care and skill and as described in an applicable Attachment or TD, including any completion criteria. Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Services end.
- b. **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 does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an IBM Product. 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. Non-IBM Products and preview products, or identified non-warranted IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Products.**

### 4. Charges, Taxes, and Payment

- a. Client will be invoiced all applicable charges specified in a TD for an IBM Product or Non-IBM Product, and charges for use in excess of authorizations. The Government will be invoiced for products upon shipment. 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 and payable within 30 days of the invoice receipt date, in accordance with the Prompt Payment Act, 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, except as may be specified in an Agreement.
- b. If applicable, Client agrees to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
- c. If Client imports, exports, transfers, accesses, or uses an IBM Product or Non-IBM Product across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- d. IBM will invoice: i) recurring charges in arrears at the beginning of the selected billing frequency term; ii) overage and usage charges in arrears; and iii) one-time charges upon IBM's acceptance of an order.

## 5. Liability and Intellectual Property Protection

- a. 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 Product 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.
- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph c below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will indemnify the Client against that claim, at IBM's expense and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client must promptly: i) notifies IBM in writing of the claim; and ii) supplies information requested by IBM. The Government shall make every effort to permit IBM to fully participate in the defense and/or settlement of such claim. However, IBM understands 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.
- d. IBM has no responsibility for claims based on: i) Non-IBM Products; ii) items not provided by IBM; iii) IBM's proper use of any Client required third-party product or service related to the administration of the transaction; or iv) any violation of law or third-party rights caused by Content, or any Client materials, designs, or specifications.

## 6. Governing Laws and Geographic Scope

- a. 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 the defense trade control regime of the United States of America and any applicable jurisdiction, including the International Traffic in Arms Regulations 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 1) any Content; or ii) use of any portion of a Cloud Service outside Client's business address.
- b. Both parties agree to the application of the laws of the US Federal Government apply without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. 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 the Cloud Service from a country outside Client's business address. 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.

## 7. General

- a. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA. This paragraph does not apply to Content provided in the use of an IBM Cloud Service or Non-IBM Cloud Service.
- b. 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. IBM is acting as an information technology provider only. IBM's directions, suggested usage, guidance or Client's use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Client is responsible for its use of IBM Products and Non-IBM Products. 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.
- c. Client may not use IBM Products or Non-IBM Products if failure or interruption of the IBM Products or Non-IBM Products could lead to death, serious bodily injury, or property or environmental damage.
- d. 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.
- e. 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.
- f. 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 IBM Products. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of IBM Products. The IBM Privacy Statement at <http://www.ibm.com/privacy/> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. 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.

- g. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. Third-party terms and privacy practices govern use of a Non-IBM Product, including Content Client may provide, grant access to or input to. IBM will invoice Client for charges due and submit Client's order details to the third-party provider for the enablement and delivery of the Non-IBM Product. IBM is not a party to any third-party agreement and is not responsible for Non-IBM Products. Access to ongoing Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM Products.
- h. An IBM Product or Non-IBM Product or feature of an IBM Product or Non-IBM Product is considered "preview product" when IBM makes such product or features available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Service level agreements, if any, do not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as pre-release, IBM is not obligated to release a generally available product. Client is responsible to return a preview product or place an order under generally available terms for acquiring IBM Products or Non-IBM Products beyond the preview period. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM Products, which IBM may use for any purpose.
- i. 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.(e.g., Leases). IBM will remain responsible to perform its obligations.
- j. 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.
- k. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. 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.
- l. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of IBM Products and Non-IBM Products. As allowable per the Client Contract, IBM may transfer Content, including personally identifiable information, 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 third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- m. US Government Enterprise is defined as the US Government Agency acquiring IBM products and/or services for the exclusive use by that Agency.
- n. If IBM and Client agree to use a Client's 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.