

Cloud Backup – Service Level Agreement (SLA)

The following terms will apply to the availability of the Cloud Backup Infrastructure. This SLA provides Customer's sole and exclusive remedy for IBM's failure to meet the standards and commitments established herein. All standards and commitments are subject to the limitations and exclusions set forth herein.

- 1. General.** Subject to the exceptions in sections 5(a) and 5(b) herein, the availability of the Cloud Backup Infrastructure is as set forth in section 3 of this SLA.
- 2. Definition of "Unavailability".** The Cloud Backup Infrastructure will be deemed to be unavailable if it does not respond to a request issued by IBM's monitoring software (referred to herein as "Unavailable"). The Cloud Backup Infrastructure will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in this SLA. IBM's records and data will be the sole basis for all SLA calculations and determinations.
- 3. Availability Commitment and Availability Calculation.** IBM provides 99.9% availability commitment on the Cloud Backup Infrastructure ("Availability Commitment"). The availability of the Cloud Backup Infrastructure for a given month will be calculated according to the following formula (referred to herein as the "Availability"):

Where: **Total minutes in the month x total servers = TMM**
Total minutes in month server(s) unavailable = TMU

And: **Availability = (TMM-TMU) x 100/TMM**

4. Patch Notification and Patch Deployment.

IBM will provide Customer with notification of approved patches within the Backup Infrastructure within seventy two (72) hours after release from vendor. Patching services are included for supported operating systems, databases, and applications that are installed by IBM. Installation services for approved patches are available within forty eight (48) hours after notification and must be scheduled during a mutually agreed upon maintenance window.

- 5. Exceptions.** The IBM Infrastructure will not be considered to be Unavailable for any outage that results from any maintenance performed by IBM (i) of which Customer is notified twenty-four (24) hours in advance; (ii) during Customer's implementation period; (iii) during IBM's then current standard maintenance windows (collectively referred to herein as "Scheduled Maintenance"); (iv) emergency maintenance; (v) as a result of Customer's request outside of the window for Scheduled Maintenance; and (vi) Force Majeure events.
- 6. Configuration Changes; Customer Supported Software.** The configuration of the Cloud Backup Services set forth in the Statement of Work ("SOW" or "Order") has been designed by the parties to provide the performance level contemplated by the Availability Commitment in this SLA. If IBM notifies Customer that it has determined that Customer's configuration is not suited to provide this level of performance, this SLA will be suspended until Customer and IBM agree upon and implement a new or modified configuration designed to provide this level of performance.
- 7. Remedies.** Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.
 - a.** If the availability of the Cloud Backup Infrastructure (as calculated in section 3 above) for a given month is less than the Availability Commitment, Customer will receive one (1) Service Credit for Cloud Backup Services. In addition, for the first one hundred (100) minute increment by which the allowable Unavailability is exceeded, Customer will receive one (1) Service Credit for Cloud Backup Services. Thereafter, for each additional one hundred (100) minute increment by which the allowable Unavailability is exceeded, Customer will receive one (1) additional Service Credit for Cloud Backup Services.
 - b.** For purposes of this SLA, a Service Credit will be deemed to be an amount equal 1/30th of the Cloud Backup Services monthly fee (herein referred to as "Service Credit"). The total Service Credits for a given month will, in no event, exceed an amount equal to fifty percent (50%) of Customer's then current monthly recurring charges for Cloud Backup Services. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All Service Credits will be calculated assuming a thirty (30) day month. The provision of Service Credit(s) will be Customer's exclusive remedy for IBM's failure to satisfy the Availability Commitment.
 - c.** In the event Customer is not current in its payment obligations when an outage occurs, remedies will accrue, but Service Credits will not be issued until Customer becomes current in its payment obligations.
 - d.** To receive Service Credits, Customer must submit a written request or notify IBM's Customer Service representative within sixty (60) days after the date in which the IBM Cloud Backup Services were Unavailable. If Customer fails to report the Unavailability as stated herein Customer's right to receive Service Credits with respect to such Unavailability will be waived.
 - e.** No more than once each calendar quarter, upon ten (10) days written notice from Customer, IBM will make available its records and data relevant to calculating availability so that Customer may audit such records and data for the sole purpose of determining the accuracy of SLA calculations.
- 8. Effective Date.** This SLA will become effective upon the Activation Date.