

IBM Business Partner Embedded Solution Agreement for Cloud Services Cloud Services Transaction Document for IBM Cloud

Client accepts this Transaction Document (“TD”) and the applicable Service Descriptions by ordering, enrolling, using, or making payment for, the Cloud Service. All terms used herein and not otherwise defined shall have the meanings ascribed to in the Embedded Solution Agreement for Cloud Services.

Cloud Service(s) and Prices

Client will receive the right to use the IBM Cloud in accordance with the Agreement, the Service Description(s) for IBM Cloud and this TD. Other Cloud Services activated via the Portal, are subject to their own Service Descriptions, which apply to those Cloud Services.

The current standard discount for IBM Cloud which IBM provides to Client for purchase of Cloud Services from IBM through the Portal is set forth below. IBM may update this table on 30 days’ notice. Client agrees to notify IBM when Client graduates from one Tier level to the next Tier level due to Client’s IBM Cloud usage by submitting an accounting ticket via the Portal. IBM will apply the new applicable discount to orders received in the month after IBM received notification from Client. Subscriptions may not be returned or exchanged.

If Client has a valid Softlayer (an IBM company) agreement in effect (as verified by IBM) any negotiated discounts or payment terms in the Softlayer agreement will be honored (and not the discounts set forth below) for Cloud Services purchased from IBM through the IBM Cloud Portal for existing workloads. Existing workload means the collection of IBM Cloud Services that were procured under the Softlayer agreement prior to the effective date of this TD. The discount structure below will apply for purchases of Cloud Services for future workloads, unless otherwise agreed to in writing.

Standard Solution Provider Discount Program – Volume Tiered Discounts

Monthly Recurring Revenue (USD*)	Monthly Discount
• All Dollars are stated in United States Dollars	
Tier 1: \$1,500 - \$4,999.99	2.5%
Tier 2: \$5,000 - \$25,999.99	5%
Tier 3: \$25,000 - \$99,999.99	7.5%
Tier 4: \$100,000 +	10%

Client must embed the Cloud Service(s) into the Value Add to form the Embedded Solution defined in the Service and Solution Partner Program application form. The Cloud Service(s) and Value Add must be packaged and delivered as integrated components of the Embedded Solution and must be made accessible to End Users in this manner. Cloud Service(s) upgrades must be provided to End Users as a component of the Embedded Solution. Client, and not the End User, may access the Cloud Service(s) directly for purposes of providing technical assistance to the End User. The End User may not use third-party tools to access the Cloud Service(s).

IBM will convert the U.S. Dollar charges using an exchange rate as required by law or based upon a Bloomberg daily closing spot rate on the business day prior to the date IBM prepares Client’s bill in Client’s local currency. The exchange rate used to calculate Client’s monthly bill may differ from rates that were in effect on the date Client placed its order in the Portal. The Portal may enable viewing of

representative charges in local currency as a courtesy. Such representative local currency amounts were calculated using an exchange rate from a different point in time and are not applicable when calculating a monthly bill.

The term of this TD will be thirty (30) days from the date of initial account set up and will automatically renew for additional 30-day terms, unless either party notifies the other in writing at least 10 days prior to the beginning of the applicable term of its intent not to renew. Individual Services must be cancelled as set forth in section 6.2 of Service Description for IBM Cloud.

Notwithstanding the order of precedence set forth in the Agreement, the following terms and conditions shall prevail over the Service Description:

- A. References to "Order Document" in the Service Description(s) shall mean this TD.
- B. IBM's Data Processing Addendum at 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 Client's End Users acting as Client'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 www.ibm.com/dpa in the Agreement shall be superseded and replaced by references to the BP-DPA. To the extent legally required, Client shall enter into data processing agreements with End User(s) that contain substantially similar terms and conditions as the BP-DPA. Client must obtain sufficient consent and authorization from End Users prior to providing personal data to IBM and engaging IBM and its contractors.
- C. If the Service Description references a particular date when the Addendum for Cloud Services applies (in Section 5 or elsewhere in the Service Description), such date does not apply to this Agreement. The terms of the Addendum for Cloud Services available at <https://www.ibm.com/acs> apply regardless of when Client's Agreement was executed.

For the purposes of this Agreement, the first two paragraphs of the Addendum for Cloud Services is replaced with the following:

"This Addendum for Cloud Services provides supplementary terms to Client's existing Embedded Solution Agreement for Cloud Services or Embedded Solution Agreement and ESA Attachment for Cloud Services, or its equivalent cloud base agreement between the parties ("Embedded Solution Agreement"). These supplementary terms were previously in Service Descriptions and will be moved to the Embedded Solution Agreement to improve Client's acquisition experience.

The terms of the Service Description prevail over conflicting terms of this Addendum and any terms that override this Addendum will be identified in the Service Description. Terms are organized in sections which may have a different name from those in Client's Embedded Solution Agreement. IBM will be happy to clarify any such terms if requested."

- D. Section 1b of the Addendum for Cloud Services references use of Enabling Software. If the Cloud Service contains Enabling Software as identified in the Service Description, it is licensed to CLIENT under the terms specified in the Service Description with the restriction that the Enabling Software may only be used as part of the Cloud Services included in the Embedded Solution in accordance with this Agreement. If End Users require the Enabling Software to access the Cloud Service as part of the Embedded Solution, Client must license the Enabling Software to the End User under Client's end user license agreement which must:
 - i) be at least as restrictive as the terms specified in the Service Description that apply to the Enabling Software; and ii) state that the Enabling Software may only be used as part of the Embedded Solution.

Client must ensure that End User is clearly instructed (whether through Client's end user agreement or otherwise) to contact Client, and specifically not IBM, in the event that the program materials (including but not limited to the program's LI) direct an End User to contact IBM.