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## **IBM Cloud for Government**

This Service Description describes IBM's Cloud for Government available to Clients under the Federal Cloud Service Agreement, Appendix T (or equivalent Cloud Service terms between the parties)(Agreement). Client means the contracting party and its authorized users and recipients of the Cloud Service.

### **Cloud Services**

IBM Cloud for Government includes Infrastructure Services that allow Client to deploy selected services and Client content, including Client applications and data, within IBM's Cloud for Government public Cloud for Government offering environment Cloud for Government also supports Client's hybrid cloud strategy with Cloud for Government dedicated and local offerings, which allow Client to deploy selected services in a dedicated IBM data center environment or directly on Client's own local infrastructure.

Infrastructure Services provide access to computing, storage, and network resources to enable Client to quickly provision or set-up cloud computing infrastructure environments.

Infrastructure Services are self-managed by Client, including selection of available data centers and selection, configuration, and management of services (such as security, backup, failover, restore, and monitoring), which Client determines are necessary to meet Client's requirements and applicable laws, including regulatory requirements for content.

### **Cloud for Government User Interface (UI)**

Upon IBM's acceptance of Client's Purchase Order or other authorized contract or funding document , IBM will activate a Cloud for Government Services account to enable Client's order and manage available Cloud Services via the Cloud for Government using the standard procedures via the on-line Cloud for Government Portal, or, if applicable, set-up of the dedicated or local environment. Client can use the Cloud for Government UI, which consists of on-line portals, mobile apps, APIs, command line interfaces, or, where available, assisted ordering (Client order placement via IBM sales support staff).

The Cloud for Government UI, support, and other information may be presented only in English and English governs any conflict with a translation. Client is responsible for actions of Client's authorized users, including their use and associated charges for such use. Client is responsible for saving, maintaining, and protecting all access keys generated for each Cloud Service.

The "Effective Date" for a Cloud Services or any upgrade is when the order is accepted by IBM. You will receive notice of acceptance through the Portal. Upon acceptance, the Portal ticketing system will initiate or change Cloud Services based upon Client's selections and Client may begin using the Cloud Services, including creating or uploading content.

Client is responsible for monitoring the term and funding allocated on Client's current Purchase Order or Contract and issue a modification prior to the term expiration or depletion of funds to continue to use the Cloud Services. All Cloud Services continue until funds are depleted or the term ends on the governing Purchase Order or Contract, or until cancelled by you or upon termination.

### **Cloud Service Use**

Specific services and offerings within Cloud for Government have additional terms, such as service levels, unique security provisions, or identification of enabling software, provided in an additional Service Description or Attachment available in the Cloud for Government UI, which override inconsistent provisions in this Service Description. Non-IBM services are provided by the third party service provider under the provider's agreement terms as disclosed in the Cloud for Government UI or via a link to the provider's website. IBM is not a party to such agreements and is not responsible for the provision of or support for the third party services, even if IBM invoices for them. Client should review the additional or third party terms before placing an order or deploying the service. Do not place an order if you do not agree or have the authority to agree with the applicable TPA Agreement terms.

IBM will provide Client at least 30 days' notice in the Cloud for Government UI of any changes to Service Descriptions or Attachments or of the withdrawal of a particular service. Any renewal would constitute the Client's acceptance of the changed terms. IBM may enable Client to continue to use existing instances of a withdrawn service during a transition period. For those services that are identified as Tier 1 in the Cloud for Government UI, IBM will not withdraw the service without making a functional equivalent available or provide in at least five years' notice of the withdrawal.

Client agrees to provide IBM complete access to and control over the required cloud infrastructure during the term of the Cloud Service, except as Client may need to retain access to perform mandatory maintenance and support activities on the infrastructure as described in such requirements.

IBM will maintain and update public instances of the Infrastructure Services on a regular basis during scheduled maintenance windows as published in support documentation available from the Cloud for Government UI portal. IBM will deploy software updates to Client's dedicated and local environments as scheduled in advance, with appropriate notification to Client, with the goal of keeping the dedicated and local environments as scheduled in advance, with reasonably current with the public instances.

### **Client Solutions**

Client may use the Cloud Services to create and make available to Client's end users Client solutions based on the Cloud Services. However, Client may not resell direct access to any of the Cloud Services to any third party without entering into a separate agreement with IBM. Client is responsible to have appropriate agreements in place with Client's end users, including rights to process content requested or provided by Client or Client's end users, and is responsible for their use of a Client solution. For Client's applications where Client permits Client's end users to log into Client's application using Facebook, Google, or other third party user credentials, these rights must include permission from Client's end users for IBM to receive and process all identifying information that is provided by that third party service.

Without limiting any valid indemnity claim under the "Liability and Indemnity" section of the Agreement, Client is solely responsible for any liability for damages or losses Client's end users incur as a result of using Client's solutions.

### **Network Access**

Infrastructure Services connect to the Cloud for Government private network, the public network (except for services not normally exposed to the public network), and IBM's internal administrative network, and are assigned to a Client dedicated private VLAN. Client may be able to disable public network access as described in Cloud for Government documentation (available in the Cloud for Government UI). The private network enables a VPN connection for administrative access, intra-application communications, communications from different points of delivery/data centers, and for access to shared Infrastructure Service. The administrative VPN enables Client to administer and manage ordered services, and to upload, download, and manage content.

Client has no ownership or transfer rights to any IP address assigned to Client and may not use IP addresses or VLANs not assigned to Client. The IP Address Policy (available in the UI) governs use and provisioning of IP addresses, including IP addresses Client provides. If an Infrastructure Service is suspended, depending on the violation, public network or private network access may be disabled until resolution of the violation. Temporary access using the private network VLAN to remedy a violation may be available. Upon cancellation of the Cloud Services, Client must relinquish use of IP addresses, including pointing the DNS for Client's domain names away from the Cloud Services.

For Cloud for Government dedicated environments, Client's authorized users may access the environment through a secure VPN. IBM will provide the necessary application side, and Client will be responsible for providing the necessary user side, VPN infrastructure.

### **Security Description**

#### **Policies**

Client's requirements and applicable laws, including regulatory requirements, for the type of content Client or its end users may provide or use with the Cloud Service, or any resulting application. The Federal Cloud for Government Cloud Services provided via our Federal Data Centers are FISMA moderate and FEDRAMP compliant. Except for available certifications, a Cloud Service is not designed to any specific security requirements for regulated data, such as personal or sensitive personal information. Client will not include any regulated content which requires additional IBM commitments to meet regulatory requirements, such as export, privacy, or security without specific agreement from IBM.

For payment card data (PCI-regulated content), IBM is responsible only to the extent of physical security of the underlying computing environment and up to specified IBM system authorizations. Client is responsible to determine if PCI DSS requirements apply to Client's or its end users' use of the Cloud Service and implement any additional and necessary measures to meet such requirements.

### **Data Collection and Content**

IBM will not access Client's or Client's end users' content except and only to extent necessary: i) when Client expressly authorizes it; ii) as specifically described in a Service Description, or a mutually agreed addendum; or iii) as required by law. In the event of a legal or governmental request for access to Client's

content, and to the extent reasonably able, IBM will provide notice to Client. For content containing personal information subject to EU Data Privacy regulations, IBM's Data Processing Agreement at <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud> applies, except to the extent that such agreement is superseded by U.S. Federal law or regulation.

Access to the Cloud for Government UI may be suspended at any time for unauthorized access or suspected misuse. Client must promptly report any security concerns, lost or stolen account information, or unauthorized access to <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud>

### **Service Level Agreements**

IBM provides service level agreements (SLAs) for IBM-branded Cloud for Government services. Service levels based on downtime do not include time related to exclusions, Cloud for Government UI unavailability, or time to reload, configure, enable, or access content or include other services indirectly affected by an outage (Downtime).

SLAs are available only if Client is compliant with the Agreement terms and do not apply to any third party including Client's end users. SLAs do not apply to beta, experimental, trial, or no-charge Cloud Services. SLAs are not a warranty and are Client's exclusive remedy for IBM's failure to meet a specified service level.

IBM will validate SLA claims based upon information provided and IBM system records. IBM will provide Cloud for Government UI or other notice of approved credits. IBM's reasonable determination of a credit is final. Client agrees to continue to make payment in full for Cloud Services while an SLA claim is being reviewed. Credits may not reduce payments due for a service below zero for any billing period.

If an IBM Business Partner sold Client a subscription to the Cloud Service, the monthly charge will be calculated on the then-current list price for the service that causes the SLA claim, discounted by 50%.

### **Exclusions**

No credits will be due for failure to meet an SLA because of: scheduled or announced maintenance; problems with Client or community content, technology, designs, or instructions; non-IBM build-packs; unsupported system configurations and platforms; Client infrastructure failures, including network, hardware, facility, or power; Client system administration actions, commands, or file transfers; Client errors or failures to provide needed information or access to resolve an outage; Client-caused security incidents or Client security testing; or other causes beyond IBM's reasonable control.

For Cloud for Government local environments, even though the Cloud Service is designed and deployed to survive most network or hardware failures, examples of failures or events that could cause an interruption in the expressed as a percentage, is calculated as the total number of minutes in a contracted month minus the total number of minutes of Downtime in that month divided by the total number of minutes in that month.

IBM provides a 99.95% availability SLA for Platform Services: i) configured for high availability and distributed across multiple Cloud for Government public regions; or ii) provisioned across multiple dedicated or local environments in

geographically separated data-centers. In addition, IBM provides a 99.5% availability service level for multiple instances of a Platform Service provisioned within a single dedicated or local environment. Client is eligible for a credit as follows:

<b>High Availability Multiple Public Region or Multiple Dedicated/Local Environments Availability Service Level</b>	<b>Single Dedicated/Local Environment Availability Service Level</b>	<b>Credit</b>
< 99.95%	< 99.5%	10%
< 99.90%	< 99.0%	25%

Client must submit an SLA claim by using the form at <http://ibm.biz/bluemixsupport> within 60 days after the end of a contracted month providing sufficient information to identify the affected Platform Service, error messages, and other information necessary to validate the claim, referencing IBM support tickets, as applicable. The credit will be the highest applicable compensation based on the cumulative availability of the affected service during a contracted month and calculated using the monthly charges for such affected service. Credits for Platform Services cannot exceed 25% of such monthly charge.

### **Infrastructure Services**

Downtime is the total accrued minutes a Client-identified Infrastructure Service is unavailable due to a service disruption based on an outage type listed below, as measured from the time of a validated outage affecting the identified service until the time such service is available, as validated by IBM support or system records.

For each 30 continuous minute period of Downtime, Client will receive a credit in the amount of 5% of the charges for the identified services directly impacted by the outage. Any period during which Downtime is less than 30 continuous minutes will not be eligible for credit. Downtime for different services may not be combined to meet this calculation.

<b>Outage Type</b>
Public Network
Private Network
Redundant Infrastructure Power and HVAC

Client's administrative user must submit an SLA claim ticket in the Cloud for Government UI portal within 60 days following the end of the outage event. The ticket must identify the affected service type, IP address, dates and times of the outage period, any error messages received, contact information, and a full description of the service loss, including logs, if applicable.

### **Infrastructure Hardware Replacement and Upgrade SLA**

IBM will use reasonable efforts to minimize Downtime when replacing failed hardware and hardware components or performing a scheduled hardware upgrade. IBM will provide the specified credit:

- for hardware replacement, except as noted below, based on the time to replace, from the time IBM verifies a Client reported hardware failure;
- for planned hardware upgrades, based on the total Downtime of the service receiving the upgrade.

<b>Service Level Time Period</b>	<b>Credit Percent *</b>
> 10 hours	60%
> 14 hours	80%
> 18 hours	100%

\* For POWER8 servers, the service level does not apply; IBM will use commercially reasonable efforts to replace a failed server, and there is no credit for failure to meet the above service levels.

## **Technical Support**

IBM provides basic level support at no additional charge for the Cloud Services. Advance support is included as part of a Cloud for Government dedicated or local environment for services executed within those

environments. Client can select fee-based technical support offerings that provide Client additional support benefits.

Client may submit a support ticket describing the issue in accordance with the applicable support policy procedures. The support policies for Infrastructure Services are available in the Cloud for Government UI

and provide details of available support options, as well as information on access, support business hours, severity classification, and support resources and limitations. IBM uses commercially reasonable efforts to respond to support requests; however, there is no specified response time objective for basic level support.

Unless otherwise agreed in writing, support is available only to Client (and its authorized users) and not to any end users of Client's solutions. Client is solely responsible for providing all customer support and services to its end users.

## **Charges**

Cloud Services will be charged on a pay-as-you-go basis unless Client purchases a subscription. Client is responsible to provide and keep a funding document timely and current with sufficient funds to cover the term so as not to interrupt Cloud Service. Service charges and pricing metrics (the units measured by the service) will be identified in the Cloud for Government UI or may be defined in a Service Description. The following charging models apply:

Monthly Charges for Cloud Services are generally billed in arrears and begin upon acceptance of a funding document (Purchase Order or Contract) and when the service is available for use, or for services that need to be configured by IBM based on Client input, when the service would be available for use if Client provides timely input.

- Charges for dedicated or local environments are generally billed in advance and will be based on the specified configuration. There are no usage charges for individual services executed within a dedicated or local environment. Components may indicate a specific configured capacity (such as gigabytes or transactions per second). Since actual capacity in practice for any configuration of the Cloud Service varies depending on many factors, the actual capacity in practice may be more or less than the configured capacity.
- Usage and overage charges are based on actual usage of the specified unit of measure, and billed in arrears. Partial usage is rounded up to the next full unit of measure.
- One-time charges for a particular activity will be billed upon acceptance of an order.

Charges will continue monthly until Client submits a cancellation ticket for the Cloud Service, the funding is depleted on the funding document (Contract, Purchase Order), the term has ended on the governing Purchase Order or Contract, or upon any termination of the Cloud Service.

### **Trial Period**

Client's account may be eligible for a 30-day trial period during which charges for certain eligible services are waived. Client will be charged for use of other services Client orders. If Client has administrative authority over an account, Client may upgrade from trial to production at any time. If an account is not

upgraded prior to the expiration of the trial period, services in that account will be disabled until the account is upgraded.

### **Billing**

Client will be billed charges each month , by invoice for payment due in accordance with the Prompt Payment Act.

### **Ordered Services Renewals**

#### **Monthly Service Periods and Cancellation of Individual Services**

Monthly service periods begin for Infrastructure Services on: the IBM established account billing date, or last day of the month if that date does not exist. For monthly Infrastructure Services, to downgrade or cancel a specific service, Client must cancel using the Cloud for Government UI at least 24 hours prior to the end of the monthly service period (in time zone GMT-6). A service can continue to be available until the end of such monthly period and Client will be billed for any usage until the service is cancelled within the system Client is responsible to monitor status of any request to cancel or downgrade a service to ensure it was successful.

### **Suspension and Termination**

#### **Suspension and Termination of Individual Services**

The term for a Cloud Service will start on the “Effective Date” and continues until funding is depleted, the term has ended on the governing Purchase Order or Contract, Client submits a cancellation order, or upon any termination of the Cloud Services.

Suspension and Termination:

IBM may suspend Cloud Services without liability as set forth in the Agreement if IBM reasonably determines: i) a security breach affecting Client or Cloud for Government infrastructure, network, or other customers; ii) a violation of law; or iii) Client’s use may subject Cloud for Government, IBM or a Cloud for Government third party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a suspension. IBM will only suspend the Cloud for Government Services causing, or the basis for, a suspension.

IBM will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect Cloud for Government or its customers from operational, security, or other risk, or if ordered by a court or other judicial body.

If use is suspended for all or any portion of the Cloud Services, for the service that is suspended:

- a. Client remains responsible for all charges incurred for any Cloud Services Client has continued access during or after a suspension;
- b. Client is not entitled to any SLA Credits for any period of suspension; and
- e. IBM or Cloud for Government is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension

Client may cancel or terminate a Cloud Service at any time as described in the section titled Cloud Service Order.

Client instructs IBM to delete content upon expiration, cancellation, or termination, and Client understand that deletion is automatic and content is not recoverable. Client must discontinue use of the Cloud Services on such effective date, and relinquish use of IP addresses, infrastructure and all other materials provided in connection with the Cloud Services, including pointing the Domain Name System (DNS) for Client's domain names away from the Cloud Services.

### **Account Termination**

Upon initial account set-up, IBM will continue to process Client's account to validate contact, account, and payment information within the initial 14 days of account activation. During this initial period, IBM may suspend Client's account as specified in section 7.1 IBM may terminate Client's account for multiple violations of the Agreement terms in accordance the Contract Disputes Act process. IBM may close Client's account if no Cloud Services are ordered or remain active after the term of the Purchase Order or Contract expires.

### **General**

#### **Enabling Software**

Enabling software may be provided by IBM to facilitate the use of the Cloud Service. Unless other terms are provided in a Service Description, Client may use the enabling software only in connection with use of the Cloud Service. If the enabling software contains sample code, Client has the additional right to make derivative works of the sample code and use them consistent with the above grant. The enabling software is provided subject to the applicable availability SLA, if any, but is otherwise provided AS IS.

#### **Apple Licensed Applications**

The following terms of use apply to any enabling software that runs, or is acquired from the Apple App store to run on, the Apple operating system (iOS). These terms are between Client and IBM and not with Apple. Apple is not responsible for the enabling software or the content thereof and has no obligation to furnish any maintenance or support services with respect to the enabling software.

These terms include the restrictions set forth in the App Store terms of service (<http://www.apple.com/legal/itunes/appstore/dev/stdeula/>) (Usage Rules).

If the enabling software fails to conform to any applicable warranty, Client may notify Apple, and Apple may refund any purchase price for the enabling software to Client; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the enabling software.

Apple is not responsible for addressing any claims Client or a third party may have relating to, or Client's possession and/or use of, the enabling software, including, but not limited to: (i) product liability claims; (ii) any claim that the enabling software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

Apple is not responsible for any third party claim that the enabling software or Client's possession and use of the enabling software infringes that third party's intellectual property rights.

Any questions, complaints or claims with respect to the Apple iOS enabling software may be emailed to [CloudDigitalSales@us.ibm.com](mailto:CloudDigitalSales@us.ibm.com).

### **Beta Services**

- Client is responsible to pay any tax, levy, or any other charge associated with Client's use of the beta or experimental service.
- Client may use a beta service for the specified period or until IBM withdraws or terminates it. Client may terminate use of a beta service at any time. Client is responsible to remove content Client wishes to retain prior to expiration or termination of the beta service.
- IBM may suspend, limit use, change, or withdraw a beta service or change these terms without

notice and at any time.

- If there are no charges, IBM's entire liability for all claims in the aggregate arising from Client's use of a beta service will not exceed the amount of any actual direct damages up to U.S. \$1,000.00 (or equivalent in local currency).
- If Client provides feedback to IBM or a third party service provider, Client agrees IBM or the third party owns and may use all feedback and suggestions provided.