

Complete Agreement: This Federal Cloud Services Agreement (FCSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this FCSA (together, the Agreement) under which Client may order Cloud Services. Cloud Services are commercial services under FAR 2.101 and offered to the Government under terms and conditions similar to those customarily provided to the public to the extent they do not conflict with federal law.

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

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

Any conflicting terms in an Attachment or TD that override terms of this FCSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

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| <p>a. IBM Cloud Services</p> | <ul style="list-style-type: none"> ● IBM Cloud Services are “as a service” IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, or infrastructure as a service. ● Each IBM Cloud Service is described in a TD. ● IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance. ● Technical support and service level commitments, if any, are specified in an Attachment or TD. |
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| <p>b. Non-IBM Services</p> | <ul style="list-style-type: none"> ● IBM may offer third party Cloud Services, or IBM Cloud Services may enable access to third party Cloud Services (Non-IBM Services). ● A TD will identify any applicable third party terms that govern Client’s use of Non-IBM Services. Client agrees that any use of Non-IBM Services will be done with legally sufficient authorization. ● IBM is not a party to any third party terms and is not responsible for Non-IBM Services. |
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| <p>c. Order Acceptance</p> | <ul style="list-style-type: none"> ● Client accepts the applicable Attachment or TD for Cloud Services by ordering or otherwise entering into an authorized order, to include, enrolling, using, or making a payment when permitted. ● IBM accepts Client’s order by confirming the order or enabling access. |
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| <p>d. What IBM Provides</p> | <ul style="list-style-type: none"> ● IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services. ● IBM provides generally available user guides and documentation to support Client's use of IBM Cloud Services. |

- e. **Enabling Software**
- Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD.
 - Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD.
 - The licensing terms will specify applicable warranties, if any. **Otherwise, Enabling Software is provided as is, without warranties of any kind.**
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- f. **What Client Provides**
- Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
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- g. **Right to Use and Client Responsibilities**
- Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires.
 - Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
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- h. **Acceptable Use Terms**
- Cloud Services may not be used for unlawful, harmful, obscene, offensive, or fraudulent Content or activity. Examples of prohibited activities are advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, introducing viruses or harmful code, or violating third party rights.
 - Client may not use Cloud Services if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage.
 - Client may not:
 - (1) reverse engineer any portion of a Cloud Service;
 - (2) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise (as defined herein); or
 - (3) combine a Cloud Service with Client's value add to create a Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
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- i. **Preview Cloud Services**
- Cloud Services or features of Cloud Services are considered "preview" when IBM generally makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview-designated Cloud Services.
 - Any preview Cloud Service is excluded from available service level agreements and may not be supported.
 - IBM may change or discontinue a preview Cloud Service at any time and without notice.
 - IBM is not obligated to release preview Cloud Services or make an equivalent service generally available.
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2. Content and Data Protection

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- a. Content Client Provides**
- Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud 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 IBM Cloud Services.
 - Use of the IBM Cloud Services will not affect Client's ownership or license rights in Content.
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- b. Use of Content**
- IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service.
 - IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services.
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- c. Client Responsibilities**
- Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services.
 - Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services.
 - If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures.
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- d. Data Protection**
- IBM Data Security and Privacy Principles (DSP), at <http://www.ibm.com/cloud/data-security>, apply for standard IBM Cloud Services that are generally available. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
 - Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD.
 - Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services.
 - Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use. Client acknowledges that the Cloud Services used meet Client's requirements and processing instructions required to comply with applicable laws.
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- e. IBM's Data Processing Addendum**
- IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>.
 - Each IBM Cloud Service has a DPA Exhibit that specifies how IBM will process Client's data.
 - The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply. Please contact your IBM representative for a copy of the DPA and DPL. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
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- Upon request by either party, IBM, Client or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
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f. Removal of Content

- For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud 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 the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.
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3. Changes and Withdrawal of Cloud Services

a. IBM Right to Change Cloud Services

- At any time and at IBM's discretion, IBM may change:
 - (1) the IBM Cloud Services, including the corresponding published descriptions; and
 - (2) the DSP and other published data security and privacy documentation for the IBM Cloud Services.
 - The intent of any change to the above will be to:
 - (1) make available additional features and functionality;
 - (2) improve and clarify existing commitments; or
 - (3) maintain alignment to current adopted operational and security standards or applicable laws.
 - Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services.
 - Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date.
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b. Withdrawal of a Cloud Service

- Unless otherwise stated in a TD, IBM may withdraw an IBM Cloud Services on 12 months' notice.
 - IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering.
 - Non-IBM Services may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.
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4. Warranties

a. IBM Warrants

- IBM warrants that it provides IBM Cloud Services or other IBM services using commercially reasonable care and skill and as described in the applicable TD.

- These warranties end when the IBM Cloud Services or other IBM services end.
 - **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.**
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b. Warranty Limitations

- **IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services.**
 - **IBM does not warrant it will correct all defects.**
 - **While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access.**
 - **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.**
 - **IBM makes preview Cloud Services or Non-IBM Services under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.**
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5. Charges, Taxes, and Payment

a. Charges

- Client agrees to pay all applicable charges and taxes specified in a TD in accordance with the Contract (e.g., GSA Schedule Pricelist), including charges for use in excess of authorizations.
 - 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 to an account specified by IBM and late payment fees may apply under the Prompt Payment Act.
 - IBM does not give credits or refunds for any, one-time charges, or other charges already due or paid, except as provided in the Agreement.
 - If IBM commits to pricing as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing pursuant to the terms of the Contract (e.g., applicable GSA Schedule Contract's Economic Price Adjustment clause and the GSA Pricelist).
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b. Withholding Taxes

- If taxes are applicable, Client agrees to:
 - (1) pay withholding tax directly to the appropriate government entity where required by law;
 - (2) furnish a tax certificate evidencing such payment to IBM;
 - (3) pay IBM only the net proceeds after tax; and
 - (4) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
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- Where taxes are based upon the location(s) receiving the benefit of the Cloud Services, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.
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c. Invoicing

- Unless otherwise stated in a TD, IBM will invoice:
 - (1) recurring charges at the beginning of the selected billing frequency term;
 - (2) overage and usage charges in arrears; and
 - (3) one-time charges upon IBM's acceptance of an order.
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6. Liability and Indemnity

a. Liability for Damages

- 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 service 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.
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b. What Damages are Not Limited

- The following amounts are not subject to the above cap:
 - (1) third party payments referred to in the Infringement Claims subsection below;
 - (2) personal injury or death resulting from IBM's negligence.
 - (3) fraud by IBM; and
 - (4) damages that cannot be limited under applicable law.
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c. Infringement Claims

- If a third party asserts a claim against Client that the IBM Cloud Service infringes a patent or copyright, IBM will assist and defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM.
 - To obtain IBM's defense against and payment of infringement claims, Client must promptly:
 - (1) notify IBM in writing of the claim;
 - (2) supply information requested by IBM; and
 - (3) allow IBM such opportunity as is offered by applicable laws, rules, and regulations to participate in, the defense and settlement, including mitigation efforts of such claim; provided that such participation will be under the control of the Department of Justice.
 - IBM's defense and payment obligations for infringement claims extend to claims based on Open Source Code that IBM selects and embeds in the IBM Cloud Services. Open Source Code is software code licensed from a third party meeting the Open Source Definition defined at <https://opensource.org/osd>.
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- d. Claims Not Covered**
- IBM has no responsibility for claims based on:
 - (1) non-IBM products and services, including Non-IBM Services;
 - (2) items not provided by IBM; or
 - (3) any violation of law or third party rights caused by Content, materials, designs, or specifications.
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7. Term and Termination

- a. Term of a Cloud Service**
- The term begins on the date IBM notifies Client that Client can access the Cloud Services.
 - The ordering TD will specify the term and whether and when the Cloud Services renew, proceed on a continuous use basis, or terminate.
 - For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the termination effective date.
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- b. Suspension of an IBM Cloud Service**
- Subject to the Contract Disputes Act for Federal Ordering Activities and Clause “552.238-114 Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019)” for Non-Federal Ordering Activities, IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a:
 - (1) material breach of Client's obligations;
 - (2) security breach;
 - (3) violation of law; or
 - (4) breach of the Acceptable Use Terms.
 - IBM will provide notice prior to a suspension as commercially reasonable.
 - If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services.
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- c. Termination of Cloud Services**
- Client may terminate an order according to the clauses included by a TD and pursuant to the rights within the Federal Acquisition Regulation.
 - Subject to the Contracts Disputes Act, IBM may terminate this FCSA for cause if Client is in material breach of this Agreement. Failure to pay applicable charges is a material breach.
 - Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
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- d. Termination of this FCSA**
- Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
 - Termination of this FCSA does not terminate TDs, and provisions of this FCSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.
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8. Governing Laws and Geographic Scope

- a. Compliance with Laws**
- Each party is responsible for complying with:
 - (1) laws and regulations applicable to its business and Content; and
 - (2) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
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- b. Applicable Laws**
- This FCSA is governed by U.S. Federal law.
 - The rights and obligations of each party are valid only in the country of Client's business address.
 - If Client or any user exports or imports Content or uses any portion of the Cloud Services outside the U.S., IBM will not serve as the exporter or importer, except as required by data protection laws.
 - 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.
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9. General

- a. IBM's Role**
- IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary.
 - IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of Cloud Services.
 - IBM is acting as an information technology provider only.
 - IBM's direction, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice.
 - 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.
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- b. FCSA Changes**
- In accordance with federal law, IBM may change the non-material terms and conditions of this FCSA. IBM will provide at least three months' notice prior to changing this FCSA.
 - FCSA changes are not retroactive. They will only apply as of the effective date to:
 - (1) new orders;
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- (2) continuous Cloud Services that do not expire; and
- (3) renewals.

- For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period.
 - Client accepts non-material changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice.
 - Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.
 - Any material updates to this FCSA shall be presented to Client for review and will not be effective unless and until both parties sign a written agreement updating these terms.
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c. Business Conduct

- 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.
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d. Business Contact and Account Usage Information

- 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, and user ID.
 - Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services.
 - The IBM Privacy Statement at <https://www.ibm.com/privacy/> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer.
 - 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.
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e. IBM Business Partners

- IBM Business Partners who use or make available Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
 - If IBM notifies Client their current IBM Business Partner will no longer resell Cloud Services, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.
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f. Assignment

- 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. IBM will remain responsible to perform its obligations.
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- IBM may share this Agreement and related documents in conjunction with any assignment.
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- g. Enterprise**
- This FCSA applies to IBM and Client (accepting this FCSA) and the respective Enterprises.
 - Client's Enterprise means the Government agency, department, bureau, division, or office identified in a TD that is authorized to access a Cloud Service.
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- h. Notices and Administration**
- 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.
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- i. Cause of Action**
- No right or cause of action for any third party is created by this FCSA or any transaction under it.
 - 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.
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- j. Global Resources**
- IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Cloud Services.
 - Client's use of the Cloud Services may result in the transfer of Content, including personal data, across country borders.
 - A list of countries where Content may be transferred and processed for an IBM Cloud Service is included in the applicable TD.
 - IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations for the IBM Cloud Services.
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- k. Other Services**
- IBM may offer additional customization, configuration, or other services to support Cloud Services, as detailed in a TD.