

## Chapter 7

# Client Relationship Agreement Services - Federal Government

This Client Relationship Agreement (CRA) for Services and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this CRA (together, the "Agreement") under which Client may order IBM Services (also referred to as "IBM Products" herein) and third party services (also referred to as Non-IBM Products herein). TDs detail 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, supplements, or invoices. Attachments provide supplemental terms that apply to certain types of Products, such as product capacity or trial services. In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment and only apply to the specific transaction.

## 1. Services

- a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. 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.
- b. 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. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will be invoiced for charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and IBM will invoice for adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.
- 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 engagements, upon completion of the service hours identified in the Statement of Work.

## 2. Content and Data Protection

- a. Content consists of information or data Client may provide, make available or grant access to, in connection with IBM providing other Services. Providing Content or otherwise using Cloud Services will not affect Client's ownership or license rights in such Content. 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 not disclosing Content except to IBM employees and contractors and only to the extent necessary to deliver the Services.
- b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, its affiliates, and contractors of either to use, provide, store and otherwise process Content in the Cloud Services or other Services. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated data in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for Cloud Services or other Services, Client will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.
- c. IBM's Data Processing Addendum at [www.ibm.com/dpa](http://www.ibm.com/dpa) (DPA) and applicable DPA Exhibit(s) apply to any personal data that the Government requires IBM to process, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679) (GDPR); ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply. Please contact your IBM representative for the applicable Data Processing Exhibit.
- d. Upon request by either party, IBM, Client, affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of personal or 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.
- e. 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 and Post Warranty Support**

- a. IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.
- b. 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. 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 warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with instructions provided by IBM. Preview services and non-IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

### **4. Charges, Taxes, Payment and Verification**

- a. Client will be invoiced all applicable charges specified 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.
- b. If applicable, Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, 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.

Client will: i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage; and ii) Client shall order and IBM will invoice for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

### **5. Liability and Indemnity**

- 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 or 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.
- b. The following amounts, are not subject to the above cap: (i) third party payments referred to in the paragraph below; (ii) damages for personal injury or death resulting from IBM's negligence; (iii) for fraud by IBM; or (iv) any other damages for which liability cannot be limited by law. 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 promptly: i) notifies IBM in writing of the claim; ii) and 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.
- c. IBM has no responsibility for claims based on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Content, or any Client materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

### **9. 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 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.
- a. 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.

## 10. General

- a. Parties will not disclose confidential information 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 a 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 an information technology provider only. Any directions, suggested usage, or guidance provided by the IBM or 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. 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.
- d. 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.
- e. IBM, its affiliates, and contractors of either, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel, and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. The IBM Privacy Statement at <https://www.ibm.com/privacy/us/en/> provides additional details with respect to BCI and Account Data described below.
- f. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's acquisition or use of IBM Products or Non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM, its affiliates, and contractors of either, may use Account Data, for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products.
- g. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments is not restricted (e.g., Leases).
- h. 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.
- i. 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. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- j. 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 processed is described in the TD or as specified in service 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.
- k. US Government Enterprise is defined as the US Government Agency acquiring IBM products and/or services for the exclusive use by that Agency.