

IBM Terms and Conditions

1. By purchasing an IBM cloud product, Participating Entity hereby agrees to and accepts the Cloud Services Agreement ("CSA") attached hereto, and any applicable Service Descriptions.

2. Additional Terms:

2.1 Right to Publish

IBM will secure prior approval from the Lead State or Participating Entity for the release of any information that pertains to the potential work or activities associated with Lead State or Participating Entities' use of IBM Cloud Service offerings, including but not limited to reference to or use of the Lead State or a Participating Entity's name, Great Seal of the State, Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion which is strictly prohibited. IBM shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the IBM Cloud Service offerings without prior written consent.

2.2 Records Administration and Audit

Upon Purchasing Entity's request, IBM will provide Purchasing Entity with the most recent certifications and/or summary audit report(s) concerning the security measures for the IBM Cloud Service or IBM computing environment used to provide the IBM Cloud Service. IBM will reasonably cooperate with the Purchasing Entity by providing available additional information to help Purchasing Entity better understand the technical and organizational security measures applicable to the Cloud Service.

If mandatory law requires Purchasing Entity to have a right of audit, Purchasing Entity will use the information provided pursuant to this Section 2.2 to satisfy such audit requirements. If additional information is required, Purchasing Entity will inform IBM accordingly to enable IBM to provide this additional information or to grant Purchasing Entity access to such information. If and to the extent it is not possible to satisfy a legally mandated audit obligation, only the legally mandated entity (such as a governmental regulatory agency having oversight of Purchasing Entity's operations) may conduct an onsite visit of the facilities used to provide the IBM Cloud Service in a manner that minimizes any risk of disruption to IBM's business and clients, and in accordance with IBM's practices and policies. Purchasing Entity agrees to treat all information disclosed during an audit as confidential in accordance with its non-disclosure agreement with IBM and obtain a written agreement with the entity receiving IBM Confidential information that is sufficient to obligate such entity to maintain IBM's Confidential information in confidence in a manner not less protective than obligations under the IBM Agreement for Exchange of Confidential Information ("AECI") or equivalent non-disclosure agreement established between IBM and Participating Entity.

2.3 Transition Assistance

IBM shall reasonably cooperate with other parties in connection with all IBM Cloud Services to be delivered to Purchasing Entity, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration

of an IBM Cloud Service offering. IBM shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the IBM Cloud Service and as agreed to between Purchasing Entity and IBM in a Statement of Work. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support shall be subject to a separate transition Statement of Work.

A Purchasing Entity and IBM shall create a transition plan document identifying the transition services to be provided and including a Statement of Work, if applicable.

IBM agrees to maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity as specified in a Statement of Work.

2.4 Laws and Regulations

Any and all Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations applicable to its business and content. 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 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. The Participating Entity is responsible for its use of IBM and non-IBM Products and Services. If NASPO ValuePoint or Participating Entity requires the IBM Cloud Service to comply with a particular set of laws and regulations, the parties must agree on the identity of such laws and the method of compliance in the relevant transaction document.

2.5 Data Access and Controls

IBM will provide access to Purchasing Entity's data as specifically described in the CSA and applicable Service Descriptions.

2.6 System Failure and Damage

If a Participating Entity's content is lost or damaged within the paid subscription period, IBM will assist Participating Entity in restoring it to the Cloud Service from Participating Entity's last available backup copy in compatible format.

2.7 Data Classification

Prior to entering into a Statement of Work with a Purchasing Entity, Purchasing Entity has the option to request a meeting with IBM to review data categorization and determine if IBM will hold, store, or process low, moderate or high level data. IBM will provide information for Purchasing Entity to determine the suitability of the specific offering for the data classification type.

2.8 Data Security and Protection

The technical and organizational measures that apply to IBM Cloud Services for data security and protection are described in the Data Security and Privacy Principles for IBM Cloud Services

(DSP) document which is incorporated in the CSA by reference except as otherwise specified in a Service Description.

2.9 Governing Law and Venue

a. The procurement, evaluation, and award of IBM Cloud Services under the NASPO Contract shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the NASPO Contract after award shall be governed by the law of the state serving as Lead State (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the NASPO Contract shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in, the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the NASPO Contract shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the NASPO Contract or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

d. This section 2.9 is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

e. If any provision of the NASPO Contract is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the NASPO Contract 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 this NASPO Contract.