

## Drive Purchase Addendum

This Addendum governs Client's request to purchase the Drive(s) containing Client's data that is hosted in an IBM data center in connection with Client's use of IBM's Cloud Services. The terms of this Addendum are in addition to the Agreement between the parties for Client's use of IBM Cloud Services. IBM may modify this Addendum by providing notice to Client.

### 1. Services

Client initiates a request to purchase one or more Drives by Client's master authorized user submitting a request form in the IBM Cloud UI in which Client identifies the IBM Cloud Services for which Client wishes to purchase the Drives and provides all other required information. IBM will notify Client of approval, rejection, or request additional information. Upon approval, IBM will open a support ticket in the IBM Cloud UI to monitor status and enable communications.

### 2. Client Responsibilities

Prior to requesting a Drive purchase, Client is responsible for:

- a. ensuring no import or export license is required to ship the Drive(s) to Client;
- b. ensuring neither Client nor any Client end user whose data is included in the Content is subject to any U.S. Government order revoking or denying their U.S. export privileges. Client agrees to notify IBM immediately if Client or any such end user becomes subject to any such order;
- c. obtaining all licensing, shipping, and customs clearances for the Drive(s), including paying any duties, taxes and shipping costs;
- d. complying with all applicable laws, including privacy, import and export, associated with delivery of the Drive(s);
- e. having proper agreements in place, and obtaining all required permissions, with Client's end users for any end user data on the Drive(s);
- f. encrypting the Content on the Drive(s) and maintaining a current backup copy of the Content on the Drive(s); and
- g. providing IBM a shipping label and commercial shipping invoice evidencing Client as the shipper/exporter of record.

### 3. In-Person Delivery and Pick Up of Drive(s)

Client may pick up the Drive(s) in person at the selected data center if:

- a. Client identifies the individual that will pick up the Drive(s) on Client's behalf, and completes any required IBM paperwork;
- b. IBM approves the pickup at least five days in advance;
- c. data center personnel schedule a date and time with Client for the pickup; and
- d. the individual shows a picture I.D. and credentials (e.g., employee badge) and signs IBM documentation when the pickup is made.

### 4. General

The fees and other charges related to the purchase of the Drive(s) are listed the IBM Cloud UI.

If Client fails to meet the documentation requirements set forth in Section 2 above, IBM may deny Client's request to purchase Drive(s).

### 5. IBM's Limitation of Liability

IBM's limitation of liability applies to Client's purchase of Drive(s); however, IBM's limitation of liability for actual damages is limited to USD \$1,000.00 and is limited solely to IBM's gross negligence or willful misconduct in the handling of the Drive(s). Any failure or delay on the part of IBM in connection with sale of the Drive(s) will not constitute a material breach of this Addendum or the Agreement. Client understands and acknowledges that Client's purchase of the Drive(s) may involve some unavailability of Client's Cloud Services, and Client agrees that any such unavailability does not constitute "downtime" for purposes of the

IBM Cloud Service Level Agreement. Client further acknowledges that IBM has no responsibility for any failure to encrypt or back up the Content on the Drive(s) or for any Drive(s) that may be lost during shipment.

## 6. **Client's Liability**

CLIENT IS RESPONSIBLE FOR ANY FRAUDULENT, MISTAKEN, OR UNAUTHORIZED DRIVE PURCHASE REQUEST MADE BY CLIENT OR OTHER PARTIES ON BEHALF OF CLIENT.

CLIENT, ON BEHALF OF ITSELF, ITS AFFILIATES AND ITS CLIENT END USERS, ASSUMES THE ENTIRE RISK OF LOSS RESULTING FROM A FAILURE TO ENCRYPT CONTENT ON THE DRIVE(S), FAILURE TO ADEQUATELY BACK UP CONTENT PRIOR TO PURCHASE OF A DRIVE, AND ANY DATA LOSS THAT MAY OCCUR AT ANY TIME DURING THE PURCHASE AND DELIVERY OF THE DRIVE(S) TO CLIENT.

## 7. **Limitation of Warranty**

IBM will use reasonable care in preparing the Drive(s) for purchase by Client, but otherwise **IBM PROVIDES THE DRIVE(S) TO CLIENT ON AN "AS IS" BASIS. IBM DOES NOT WARRANT THAT A DRIVE, OR ANY CONTENT STORED ON A DRIVE, WILL BE FUNCTIONAL UPON RECEIPT BY CLIENT.**

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Agreed:

Client: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_