

## IBM Open Source Software Cloud on LinuxONE Conditions

Under these Terms of Use, International Business Machines Corporation (“IBM”) shall provide you with access to a LinuxONE and Storage environment (the “Environment”) for the purpose of providing the Open Source community with a platform to develop, port and/or test your products or applications on this platform (collectively, the “Services”). You will be solely responsible for (1) acquiring appropriate authorization, licenses and consents to use any data, information or software programs (collectively “Content”) you utilize in connection with the Services, and (2) complying with the terms and conditions associated with such Content. IBM shall not be liable to you or any third party in connection with your use of such Content.

1. By using the Services, you are agreeing to these Terms of Use. Some features may require additional terms and conditions.
2. The Environment is provided as an “as-is” service. There is no claim of suitability of the Environment for your use.
3. The Services are available to develop, test, port or otherwise try open source software on the z System architecture hardware. Using resources of the Environment to develop, test, and/or port software for commercial use is prohibited.
4. The LinuxONE Community Cloud may not be used for stress testing, performance testing or benchmark testing. Furthermore, publishing any stress testing, performance testing or benchmark testing results is strictly prohibited.
5. There are no data backups performed, and you should maintain backup copies of any Content stored in the Environment.
6. Access to the Environment is solely via network access. No physical access to the equipment will be granted.
7. You may not store any Content in the Environment that would require reporting to third parties if compromised, such as, but not limited to: Protected Health Information (PHI), account information covered by Payment Card Industry Data Security Standard (PCI/DSS), Family Educational Rights and Privacy Act (FERPA), Gramm-Leach-Bliley Act (GLB) or other personal identification information.
8. The Services includes a shared environment, and IBM may throttle, gate or otherwise limit usage if, in its sole determination, excessive network, computing or other resources are being used.
  - a. You agree not to misuse the Services. For example, you agree that you will not interfere with the Services or try to access them using a method other than the interface and the instructions that we provide. You shall use the Services only as permitted by law, including applicable export and re-export control laws and regulations. IBM may suspend or stop providing the Services to you if you do not comply with these terms or policies, or if we are investigating suspected misconduct.
  - b. Using the Services does not give you ownership of any intellectual property rights in the Services or the Content you access. You shall not use Content from the Services without obtaining permission from the Content’s owner or are otherwise permitted by law. These terms do not grant you the right to use any branding or logos used in the Services. You agree that you shall not remove, obscure, or alter any legal notices displayed in or along with the Services.
  - c. In connection with your use of the Services, IBM may send you service announcements, administrative messages, and other information.
9. IBM reserves the right at all times to terminate your account for any reason (such as violation of these Terms of Use) or no reason at all, with or without notice to you. IBM also reserves the right to access, read, preserve, and disclose any information as IBM reasonably believes is necessary to (i) satisfy any

applicable law, regulation, legal process or governmental request; (ii) enforce these terms, including investigation of potential violations; (iii) detect, prevent, or otherwise address fraud, security or technical issues; (iv) respond to user support requests; and (v) protect the rights, property or safety of IBM, its users and the public.

10. Once the Environment is provided to you, you are responsible for all activities that occur in that Environment, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by IBM's breach of these Terms of Use, IBM and its affiliates are not responsible for unauthorized access to your Environment. You further agree that you will keep up to date on and install accordingly any and all security updates, security packages, security patches, and/or security fixes related to the Environment, and that IBM shall have no liability or responsibility with respect to your failure to do so.
  - a. To help protect your LinuxOne account, keep your Secure Shell (SSH) keys confidential. You are responsible for the activity that happens on or through your LinuxOne account.
  - b. The use of a password to access the Services is prohibited. Only SSH keys are allowed.
11. Limited support, if any is to be provided, will solely be via email.
12. IBM responds to notices of alleged copyright infringement and will terminate accounts of repeat infringers as according to the process set out in the U.S. Digital Millennium Copyright Act.
13. If you do not comply with these terms, and IBM does not take immediate action, such lack of immediate action does not waive any rights that IBM may have, such as taking action in the future as permitted by law.
14. Warranties and Disclaimers

IBM PROVIDES THE SERVICES, INCLUDING ALL ASSOCIATED MATERIALS, PRODUCTS, DATA, APPARATUS AND SOFTWARE, "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE AND NON-INFRINGEMENT. YOU ASSUME ALL RISK FOR USING THE SERVICES IN ANY ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, OR BUSINESS MAY RESULT IF AN ERROR OR INTERRUPTION OCCURS. WITHOUT LIMITATION, NO WARRANTY, CONDITION OR REPRESENTATION IS MADE THAT THE SERVICES ARE ERROR-FREE, UNINTERRUPTED, TIMELY, OR SECURE, THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT IBM WILL CORRECT DEFECTS. IBM MAKES NO WARRANTY, CONDITION OR REPRESENTATION FOR THE TIMELINESS, DELETION, MIS-DELIVERY, DELAY IN OPERATION OR TRANSMISSION, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO A USER'S DATA OR CONTENT, OR FAILURE TO STORE ANY USER COMMUNICATIONS OR PERSONALIZED SETTINGS.

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. IBM DOES NOT WARRANT AND DISCLAIMS ALL LIABILITY THAT ITS SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, YOUR DATA. IBM IS NOT RESPONSIBLE FOR INVALID DESTINATIONS AND TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF YOUR INFORMATION CARRIED OVER TELECOMMUNICATIONS CARRIERS' OR OTHER PROVIDERS' FACILITIES.

IBM DOES NOT CONTROL THE TRANSFER OF DATA OVER THE INTERNET.

IBM DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE CAPACITY, PERFORMANCE OR SCALABILITY OF THE SERVICE.

15. Limitation of Liability

Your sole right and exclusive remedy, and IBM's exclusive liability, with regard to the Services performed under this Terms of Use is to terminate your use of the Services.

IN NO EVENT WILL IBM , NOR ITS AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, OR EMPLOYEES, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, OR INDIRECT DAMAGES OR FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS, SAVINGS, OR DATA), EVEN IF THEY ARE INFORMED OF THE POSSIBILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU.

#### 16. Indemnification

You agree to indemnify, defend and hold harmless IBM, its affiliates, contractors, service providers, employees, agents and their respective employees, officers, and directors from and against any third party claim (and pay all damages that a court of competent jurisdiction awards to such third party and any reasonable attorneys' fees and expenses of defense incurred by IBM), related to or arising from your use of the Services, including any breach of these Terms of Use or the posting or transmission of any Content by you.

#### 17. No Sale of Service, No Sale or Lease of Goods

You agree not to reproduce, duplicate, copy, sell or resell for any purposes, the Services, use of the Services, or access to the Services, in whole or in part. As between you and IBM, IBM retains all right, title and interest in any intellectual property, including hardware or software, provided by IBM in connection with the Services. No goods are sold or leased from IBM under these Terms of Use.

#### 18. Publicity and Trademarks

Neither you nor IBM grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent by the other.

#### 19. Governing Law and Jurisdiction

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. These Terms of Use are governed by the substantive laws of the State of New York. Any proceedings to resolve disputes relating to the Terms of Use shall be brought in a U.S. Federal Court in the State of New York. You hereby expressly waive the right to trial by jury in any matter which arises under these Terms of Use.

If you agree to the above terms, kindly have this letter signed by an authorized representative and return a signed copy. Signatures to these Terms of Use may be delivered electronically or by facsimile if legally valid in your jurisdiction, in which case the electronic copy of the original signature shall be deemed to be an original signature.

IBM Corporation

Community:

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

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

Signature

Signature

Name:

Name:

Title:

Title:

Date Signed

Date Signed