



Operated by MIBB

## Terms of Use

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### General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms applicable for Cloud Services Client may order under either the International Passport Advantage Agreement or the International Passport Advantage Express Agreement, as applicable ("Base Agreement") and are in addition to other applicable Transaction Documents (TDs) and Attachments, collectively the complete agreement ("Agreement") regarding transactions for a Cloud Service.

#### 1. Changes and Withdrawal of Cloud Services

- a. At any time and at MIBB's discretion, MIBB may change i) the MIBB Cloud Services, including the corresponding published descriptions. The intent of any change will be to: (i) make available additional features and functionality; (ii) improve and clarify existing commitments; or (iii) 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 MIBB Cloud Services. Changes to the published descriptions, or published other documents, will be effective when published or on the specified effective date.
- b. Any changes that do not meet conditions specified in item a above will only take effect, and Client accepts, upon: (i) a new order; (ii) the term renewal date for the Cloud Services that automatically renew; or (iii) notification from MIBB of the change effective date for ongoing services that do not have a specified term.

#### 2. Payment and Taxes

- a. MIBB will invoice: (i) recurring charges at the beginning of the selected billing frequency term; (ii) overage and usage charges in arrears; and (iii) one-time charges upon MIBB's acceptance of an order.
- b. If MIBB has not otherwise committed to pricing during the term of a Cloud Service, then MIBB may change charges on thirty days' notice.

#### 3. Term and Termination

- a. The term begins on the date MIBB notifies Client that Client can access the Cloud Services. The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. For automatic renewal, unless Client provides written notice of non-renewal to MIBB or the MIBB Business Partner involved in the Cloud Services not to renew at least 40 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. For continuous use, the Cloud Services will continue to be available on a month-to-month basis until Client provides 40 days written termination notice to MIBB. The Cloud Services will remain available until the end of the calendar month after such 40-day period.
- b. MIBB may suspend or limit, to the extent necessary, Client's use of a Cloud Service if MIBB reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the acceptable use terms and prohibited uses as set forth in Agreement. MIBB will provide notice prior to a suspension as commercially reasonable. If the cause of a suspension can reasonably be remedied, MIBB will provide notice of the actions Client must take to reinstate the Cloud Services. If Client fails to take such actions within a reasonable time, MIBB may terminate the Cloud Services. Clients' failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire Cloud Services, is a material breach.
- c. Client may terminate the MIBB Cloud Services on 40 days' notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the MIBB Cloud Services; ii) if a change to the MIBB Cloud Services causes Client to be noncompliant with applicable laws; or iii) if MIBB notifies Client of a change to the MIBB Cloud Services that has a material adverse effect on Client's use of the MIBB Cloud Services, provided that MIBB will have 90 days to work with Client to minimize such effect. In the event of any such Client termination above or a similar termination of a Non-MIBB Service, MIBB shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Cloud Services are terminated for any other reason, Client will pay to MIBB, on the date of termination, the total amounts due per the Cloud Service terms. Upon termination, MIBB may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.

#### 4. Hybrid and Dual Entitlement Offerings

Hybrid and Dual Entitlement offerings are Cloud Services which provide Client with access to Programs for use in the

environment of Client's choice, as well as software as a service function provided in an IBM cloud environment. Programs, Support, and Program updates are provided in accordance with the Base Agreement and the following modifications:

- (1) Client's Program license ends when the Cloud Service subscription ends. Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;
- (2) any specified money back guarantee does not apply for identified Programs;
- (3) for Hybrid Entitlement offerings, separate entitlements are required for the simultaneous use of the Cloud Service and use of the Programs in a Client computing environment; and
- (4) for Dual Entitlement offerings, entitlements permit simultaneous use of the Cloud Services and use of the identified Programs in a Client computing environment.

## 5. General

- a. 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 Services 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.**

## 6. Previous Base Agreement Versions

- a. For Clients acquiring Cloud Services under a Base Agreement version prior to version 10 dated Nov 2017, SaaS offerings are Cloud Services, and the following additional terms apply.

### 6.1 Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to Cloud Services or information or data Client may provide, make available or grant access to, in connection with MIBB providing other Services. Client grants the rights and permissions to MIBB, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Cloud Services or other Services. Use of the MIBB Cloud Services or other MIBB Services will not affect Client's ownership or license rights in Content.
- b. MIBB, its affiliates, and their respective contractors may access and use the Content solely for the purpose of providing and managing the Cloud Services or other Services. MIBB will treat all Content as confidential by only disclosing the Content to MIBB employees and contractors to the extent necessary to provide the Cloud Services or other Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or to provide other 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 Cloud Services or to provide other Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by MIBB for the MIBB Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the MIBB Cloud Services unless specifically permitted in the terms of the relevant TD or unless MIBB has otherwise first agreed in writing to implement additional security and other measures. Client is responsible for adequate backup of Content on Client managed systems prior to providing or allowing access of Content to MIBB to provide other Services.
- e. MIBB Privacy Principles apply for generally available, standard MIBB Cloud Services and other MIBB Services as identified in a TD. At MIBB's discretion, MIBB may change the MIBB Privacy Principles from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of a Cloud Service or other Services will be described in the applicable Attachment and/or TD(s). Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use of Content with Services MIBB will provide. Client acknowledges that the use of Cloud Services and other Services meets Client's requirements and processing instructions required to comply with applicable laws.
- g. For MIBB Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, MIBB will return or remove Content from MIBB computing resources upon the expiration or cancellation of the MIBB Cloud Services or other MIBB Services, or earlier upon Client's request. MIBB may charge for certain activities performed at Client's request (such as delivering Content in a specific format). MIBB does not archive Content; however, some Content may remain in backup files until expiration of such files as governed by MIBB's backup retention practices.

### 6.2 Warranty

- a. MIBB warrants that it provides MIBB Cloud Services or other Services using commercially reasonable care and skill and as described in the applicable Attachment or SD. These warranties end when the MIBB Cloud Services or other Services end.

### **6.3 Scheduled Maintenance**

- a. MIBB Cloud Services are designed to be available 24/7, subject to maintenance. MIBB will provide advance notice of scheduled maintenance.

### **6.4 Non-MIBB Cloud Services**

MIBB may offer Non-MIBB Cloud Services, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-MIBB Cloud Services constitutes Client's agreement with such third-party terms. Third-party terms and privacy practices govern use of Content Client may provide, grant access to or input to a Non-MIBB Cloud Service or other Non-MIBB Service. MIBB is not a party to any third-party agreement and is not responsible for Non-MIBB Cloud Services. Access to Non-MIBB Cloud Services may be discontinued at any time if the third party discontinues or MIBB no longer makes available such Non-MIBB Cloud Services.