

## IBM Bluemix

### Data Transfer Service Attachment

This Attachment governs data transfer services IBM or an affiliate provides when Client requests transfer of Content to an IBM Bluemix bare metal server (Hardware) using a physical data storage device provided by Client (Device). The terms of this Attachment are in addition to the Agreement between the parties for Client's use of IBM Bluemix Cloud Services and take precedence in the event of any conflict. Data transfer services are only available for bare metal servers in IBM data centers identified in the Bluemix UI at <https://manage.softlayer.com> and are not available for the transfer of Content to virtual machines. IBM may modify this Attachment and available data transfer services by providing notice to Client.

#### 1. Services

Client initiates a data transfer request by Client's master authorized user submitting a completed data transfer request form (DTS Form) in the Bluemix UI in which Client will, among other things, identify the owner of the Device and the owner of the data stored on the Device (Content). IBM will notify Client of approval, rejection, or request additional information. Upon approval, IBM will open a support ticket in the Bluemix UI to monitor transfer status and enable communications. If Client ships or delivers a Device prior to IBM granting approval, IBM will reject delivery or destroy the Device.

Upon receipt of an approved Device, IBM will connect the Device to the identified Hardware and update the support ticket accordingly so that Client can begin transferring the Content. Client must notify IBM in the Bluemix UI once transfer is complete. IBM will then detach the Device and either return or destroy it as described in this Attachment and any Client instructions provided on the DTS Form.

Data transfer services are provided as a courtesy for Client's convenience. Client is responsible to determine if a Device is compatible with the Hardware; validate the Device is properly attached after connection; and monitor and validate that transfer of the Content is complete. IBM will not perform or execute any commands to initiate the transfer of Content. Client will not have physical access to the data center or Hardware.

#### 2. Client Responsibilities

Prior to requesting data transfer services, Client is responsible for:

- a. ensuring no import or export license is required to ship the Device to the IBM data center, or to return it to Client (if applicable);
- 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 clearance for the Device, including paying any duties, taxes and shipping costs to and from (if applicable) the IBM data center;
- d. complying with all applicable laws, including privacy, import and export, associated with delivery and return of the Device, and the transfer of Content to the IBM data center; and
- e. having proper agreements in place, and obtaining all required permissions, with Client's end user for any end user data Client will transfer to the Hardware.

Prior to shipping a Device, Client is responsible for:

- a. maintaining a current backup copy of the Content on the Device;
- b. providing IBM a return shipping label and commercial shipping invoice evidencing Client as the shipper and exporter of record.

#### 3. Hand Delivery and Pickup of Device

Client may deliver or pick up a Device in person at the selected data center if:

- a. Client identifies the individual (by name in the DTS Form) that will perform the delivery or pickup on Client's behalf, and completes any required IBM paperwork;
- b. IBM approves the delivery or pickup at least five days in advance;

- c. data center personnel schedule a date and time with Client for the delivery or pickup; and
- d. the individual shows a picture I.D. and credentials (e.g., employee badge) and signs IBM documentation when the delivery or pickup is made.

**4. Disconnection and Return or Destruction of Device**

IBM will disconnect a Device after 14 days or expiration of any approved extension. IBM will destroy the Device in accordance with standard IBM procedures unless the DTS Form specifies that the Device be returned to Customer, in which case Customer must include a valid return shipping label from an approved carrier in the original shipment. Failure to do so may result in destruction of the Device.

**5. General**

Currently, there is no charge for the data transfer services if Client completes the transfer within 14 days after the Device is connected to the Hardware. IBM may extend connection time for a fee upon timely request by Client through the Bluemix UI.

If Client fails to meet the documentation requirements set forth in Section 2 above, IBM may either destroy the Device or store it for a reasonable fee for a maximum of 30 additional days, after which IBM will destroy the Device. Client is responsible to pay IBM any charges for storage or destruction within 30 days after date of invoice.

**6. IBM's Limitation of Liability**

IBM's limitation of liability applies to data transfer services, 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 a Device in IBM's possession (i) prior to connecting it to the Hardware, or (ii) after detaching the Device and prior to either destroying it or giving it to Client's carrier for return shipment. No failure or delay on the part of IBM in performing data transfer services will constitute a material breach of this Attachment or the Agreement.

**7. Client's Liability**

CLIENT IS RESPONSIBLE FOR ANY FRAUDULENT, MISTAKEN, OR UNAUTHORIZED DATA TRANSFER 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 ADEQUATELY BACK UP CONTENT ON A DEVICE.

**8. Limitation of Warranty**

IBM will use reasonable care in handling a Device in IBM's possession, otherwise **IBM PROVIDES THE DATA TRANSFER SERVICES ON AN "AS IS" BASIS. IBM DOES NOT WARRANT THAT A DEVICE, OR ANY CONTENT STORED ON THE DEVICE, WILL BE FUNCTIONAL ON THE HARDWARE.**

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Agreed:

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

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

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

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

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