



Profound App Dev Software License Agreement

IBM Cloud Catalog Edition

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1.2 "Software" shall mean Profound App Dev and any updates, patches, enhancements, or modifications thereto provided by Profound.

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1.4 "Cloud Instance" shall mean a virtual machine, container, or other cloud-based computing environment in which the Software is deployed and operates.

1.5 "License Key" shall mean the unique activation code or entitlement provided to you through the IBM Cloud Catalog which enables your use of the Software. In the event you are provided multiple license keys or entitlements, each shall be governed by a separate instance of this Agreement.

1.6 "Activation Date" shall mean the date on which you are provided with the License Key or the date on which your subscription through IBM Cloud Catalog becomes active, whichever occurs first.

1.7 "Subscription Term" shall mean the period during which you are entitled to use the Software as specified in your IBM Cloud Catalog order, including any initial term and renewal periods.

1.8 "Authorized Users" shall mean the individuals authorized to access and use the Software under the license metrics specified in your IBM Cloud Catalog order.

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- (c) Concurrent User: The number of individuals using the Software at any one time may not exceed the number specified in your order;
- (d) Named User: The total number of individuals authorized to use the Software may not exceed the number specified in your order;
- (e) Floating License: A pool of server licenses that may be dynamically allocated across Cloud Instances as your infrastructure scales up or down. Rather than assigning a permanent license key to a specific server, floating licenses are drawn from your pool when a Cloud Instance running the Software is started and returned to the pool when the instance is stopped or terminated. The total number of Cloud Instances actively running the Software at any given time may not exceed the number of floating licenses specified in your order;
- (f) Consumption-Based: Your use of the Software may be metered and billed based on actual usage as specified in your order.

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4.6 This license is for machine-readable code only and, except for certain templates that may be provided in source code format, does not include source code.

5. Restrictions

5.1 All copies of the Software shall include Profound's copyright, trademark, patent and other proprietary notices as appear in the originals. You shall maintain accurate records regarding your deployment and use of the Software, including Cloud Instances, users, and usage metrics.

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6. Confidentiality

6.1 CONFIDENTIAL INFORMATION. In the course of carrying out this Agreement, you may be exposed to certain proprietary technologies, processes, software, trade secrets, data and/or know-how ("Confidential Information") of Profound. Notwithstanding the foregoing, in no event shall Confidential Information include any information which (i) was publicly known or made generally available in the public domain prior to the time of exposure; (ii) becomes publicly known or made generally available to the public through no fault of you; (iii) is in your possession, at the time of exposure without confidentiality restrictions; or (iv) is independently developed by you as evidenced by a contemporaneous writing.

6.2 LIMITED USE. You agree not to use any Confidential Information for any purpose except in accordance with this Agreement. You agree not to disclose any Confidential Information to third parties, except to your employees and authorized independent contractors for whom it is appropriate to disclose and permit the use of such Confidential Information for purposes of this Agreement.

6.3 MAINTENANCE OF CONFIDENTIALITY. You shall take all commercially reasonable measures to protect the secrecy of and avoid unauthorized disclosure and unauthorized use of the Confidential Information. You shall reproduce any proprietary rights notices on any approved copies of Confidential Information in the same manner in which such notices were set forth in or on the original. You must treat the License Key and any entitlement credentials as Confidential Information of Profound.

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8. Limited Warranty; Warranty Disclaimer; Limitation of Liability

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9. Term and Termination

9.1 TERM. The term of this Agreement shall commence upon the Activation Date and continue for the Subscription Term specified in your IBM Cloud Catalog order, unless earlier terminated as provided herein.

9.2 RENEWAL. Your subscription may automatically renew in accordance with the renewal terms specified in your IBM Cloud Catalog order and the IBM Cloud Services Agreement. To prevent automatic renewal, you must cancel your subscription through the IBM Cloud Catalog in accordance with IBM's cancellation procedures prior to the end of the then-current Subscription Term.

9.3 TERMINATION. This Agreement may be terminated as follows:

- (a) By you, by canceling your subscription through the IBM Cloud Catalog in accordance with IBM's cancellation procedures;

- (b) By Profound, immediately and without notice, upon breach of any material provision of this Agreement by you;
- (c) By Profound, immediately and without notice, if you fail to pay any amounts due through the IBM Cloud Catalog;
- (d) Automatically, upon expiration of an evaluation or trial license if a commercial subscription is not purchased; or
- (e) By mutual written agreement of the parties.

9.4 EFFECT OF TERMINATION. Upon termination or expiration of this Agreement: (a) all rights granted to you under this Agreement shall immediately cease; (b) the Software may be deactivated and rendered inoperable without prior warning to you; (c) you shall cease all use of the Software and delete any local copies or cached data; and (d) you shall certify in writing, upon Profound's request, that you have complied with these termination obligations. Sections 3, 5, 6, 8, 9.4, and 10 shall survive termination of this Agreement.

10. Miscellaneous

10.1 TRANSFERABILITY. You may not assign or otherwise transfer any of your rights or delegate or otherwise transfer any of your obligations under this Agreement without Profound's prior written consent. Notwithstanding the foregoing, you may assign this Agreement as part of a corporate reorganization, consolidation, merger or sale of substantially all assets or all stock of your company, provided that you shall provide written notice of such assignment to Profound and the assignee agrees to be bound by this Agreement. Profound may assign or otherwise transfer any of its rights or delegate or otherwise transfer any of its obligations under this Agreement without restriction. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

10.2 NOTICES. All notices to Profound under this Agreement must be in writing to Profound Logic Software, 1133 Camelback St. #12559, Newport Beach, CA 92658 through (i) personal service, (ii) via certified mail, return receipt requested, or (iii) via email to legal@profoundlogic.com for non-legal notices.

10.3 GOVERNING LAW. This Agreement shall be construed and governed in accordance with the substantive laws of the State of Ohio, and any claim related to this Agreement or the Software shall be brought in a competent court in Cincinnati, Ohio. You hereby waive any defense that you are not subject to the jurisdiction of such courts, that any such action is brought in an inconvenient forum, or that venue of the action is improper.

10.4 AUDIT. You agree to maintain accurate records of your use of the Software, including deployment configurations and user counts. From time to time, Profound may request a self-certification of your compliance with the license metrics, or may hire a disinterested third party to audit your use of the Software. All such audits shall be during normal business hours and on dates mutually agreed, and you agree to cooperate in such audits and inspections. If any audit reveals underpayment or excess usage, you shall promptly pay the applicable fees plus a reasonable audit cost.

10.5 TAXES. You are responsible for any applicable sales, use, excise, value-added, or other similar taxes, levies, or duties payable with respect to your subscription assessable by any local, state, provincial, federal, or foreign jurisdiction, except to the extent such taxes are collected by IBM through the IBM Cloud Catalog. Unless expressly specified otherwise, all fees, rates, and estimates exclude such taxes, levies, and duties. Profound is responsible only for taxes based upon Profound's net income, assets, payroll, property, and employees.

10.6 UNENFORCEABILITY. It is intended that this Agreement shall not violate any applicable law. If, at any time or for any reason, any provision becomes unenforceable or invalid, such provisions shall be amended to bring them into legal compliance and to preserve to the maximum extent possible the intent of the parties, and the remaining provisions shall remain unaffected and continue with the same effect as if such unenforceable or invalid provision had not been inserted herein.

10.7 NO WAIVER. Failure of either party to exercise its rights under this Agreement shall not be construed as a waiver of that party's rights, including without limitation the right to seek remedies arising from past, present or future breach by the other party.

10.8 HEADINGS. The headings and captions in this Agreement are for convenience purposes only, and shall not be used to construe the terms of this Agreement.

10.9 ENTIRE AGREEMENT. This Agreement, together with the IBM Cloud Services Agreement and your IBM Cloud Catalog order, contains the entire understanding between you and Profound with respect to the Software. This Agreement supersedes all prior agreements between you and Profound, whether oral or written, express or implied, as to the Software. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by the parties.

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