



## IBM Terms of Use – SaaS Specific Offering Terms

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### IBM Watson for Oncology

The Terms of Use (“ToU”) is composed of this IBM Terms of Use - SaaS Specific Offering Terms (“SaaS Specific Offering Terms”) and a document entitled IBM Terms of Use - General Terms (“General Terms”) available at the following URL: [www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/](http://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/).

In the event of a conflict, the SaaS Specific Offering Terms prevail over the General Terms. By ordering, accessing or using the IBM SaaS, Client agrees to the ToU.

The ToU is governed by the IBM International Passport Advantage Agreement, the IBM International Passport Advantage Express Agreement, or the IBM International Agreement for Selected IBM SaaS Offerings, as applicable (“Agreement”) and together with the ToU make the complete agreement.

#### 1. IBM SaaS

The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:

- IBM Watson for Oncology

#### 2. Charge Metrics

The IBM SaaS is sold under one of the following charge metric(s) as specified in the Transaction Document:

- a. Patient is a unit of measure by which the IBM SaaS can be obtained. A Patient is a unique individual for whom a set of attributes is input in the IBM SaaS. Sufficient entitlements must be obtained to cover all Patients managed or tracked within the IBM SaaS during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document.

#### 3. Charges and Billing

The amount payable for the IBM SaaS is specified in a Transaction Document.

##### 3.1 Set-Up

An initial one-time setup fee applies at the rate and billing term specified in the Transaction Document.

##### 3.2 Partial Month Charges

A partial month charge as specified in the Transaction Document may be assessed on a pro-rated basis.

##### 3.3 Overage Charges

If actual usage of the IBM SaaS during the measurement period exceeds the entitlement specified in the PoE, Client will be charged for the overage as specified in the Transaction Document.

#### 4. IBM SaaS Subscription Period Renewal Options

Client's PoE will set forth whether the IBM SaaS will renew at the end of the Subscription Period, by designating one of the following:

##### 4.1 Automatic Renewal

If Client's PoE states that Client's renewal is automatic, Client may terminate the expiring IBM SaaS Subscription Period by written request to Client's IBM sales representative or IBM Business Partner, at least ninety (90) days prior to the expiration date as set forth in the PoE. If IBM or its IBM Business Partner does not receive such termination notice by the expiration date, the expiring Subscription Period will be automatically renewed for either one year or the same duration as the original

##### 4.2 Continuous Billing

When the PoE states that Client's renewal is continuous, Client will continue to have access to the IBM SaaS and will be billed for the usage of the IBM SaaS on a continuous basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Client will need to provide IBM or its IBM Business Partner with ninety (90) days written notice requesting that Client's IBM SaaS be cancelled. Upon cancellation of Client's access, Client will be billed for any outstanding access charges through the month in which the cancellation took effect.

### 4.3 Renewal Required

When the PoE states that Client's renewal type is "terminate", the IBM SaaS will terminate at the end of the Subscription Period and Client's access to the IBM SaaS will be removed. To continue to use the IBM SaaS beyond the end date, Client will need to place an order with Client's IBM sales representative or IBM Business Partner to purchase a new Subscription Period.

## 5. Technical Support

During the Subscription Period and after IBM notifies Client that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via an online problem reporting system. Any enhancements, updates, and other materials provided by IBM as part of any such technical support are considered to be part of the IBM SaaS and therefore governed by this ToU.

Client will be the first line of support and interface to provide support to all IBM SaaS end-users. Except as noted below, Client will provide Level 1 and Level 2 support to end users. If the IBM SaaS problem has been identified during your Level 1 Support, IBM will provide the Watson-specific Level 2 support as described in this section.

### 5.1 Support

#### 5.1.1 Level 1 Support

Client will take the first support call from an end user and fulfill the following steps:

- a. Qualify incoming calls:
  - (1) Determine if the request is for a new or existing case.
  - (2) Assign a severity to a new case (priority one through priority four as defined in the Severity Definition table below).
  - (3) Obtain case information.
- b. Characterize the problem and environment:
  - (1) Gather information about the case and determine if the problem is associated with the IBM SaaS or arises from some other source.
  - (2) Completely define and describe the problem.
  - (3) Identify ways to understand the problem's behavior.
  - (4) Document the characterization information.
  - (5) Analyze problem symptom(s); attempt to find root cause when appropriate; and describe the result of such attempts.
  - (6) Determine if the problem is a known IBM SaaS problem or problem arising from another source by accessing IBM online support resources.
- c. If it is determined to not be an IBM SaaS problem, contact Client's Level 2 technical support for issues unrelated to IBM Watson or the IBM SaaS.
- d. If it is determined to be an IBM SaaS problem contact IBM Watson Level 2 technical support:
  - (1) For new cases, open a case and assign a severity number as defined per severity classifications in the Severity Definition table below.
  - (2) For existing cases, stat the case number. Provide the case information Client has gathered to the Level 2 support engineer.

#### 5.1.2 Level 2 Support

- a. Level 2 support is the activity performed to analyze or repeat the error, or to determine that the error is not repeatable. This activity also includes in-depth technical analysis. IBM's Watson Level 2 Support specialists from IBM's team and Client's Level 1 and Level 2 Support teams will work together to resolve issues.
- b. IBM Level 2 technical support is included with the IBM SaaS offering and is not available as a separate offering.
- c. Technical support will be provided to Client via electronic communications. Technical support contact information will be provided when Client is on-boarded to the IBM SaaS. IBM reserves the right to change any URL, or email address related to technical support and will promptly notify Client of any change.

### 5.1.3 Support Hours:

Client provided Level 1 and Level 2 support hours are as determined by Client.

Level 2 support and above is provided by IBM from 9:00 AM – 5:00 PM in the time zone as selected by Client from the list below, Monday through Friday (excluding IBM-recognized local holidays in time-zone selected).

- 9:00 AM – 5:00 PM Eastern US time
- 9:00 AM – 5:00 PM Dublin, Ireland time
- 9:00 AM – 5:00 PM Sydney, Australia time

After hours Support by IBM is not available in any time zone.

### 5.1.4 Scheduled and Emergency Maintenance

#### a. Scheduled Maintenance Windows.

IBM may perform regularly scheduled maintenance during maintenance windows as defined by IBM at its discretion. The maintenance window is 9 PM Saturday – 9 AM Sunday, U.S. Eastern Time, weekly.

Though generally kept brief, down time may occur during portions of these maintenance windows. Other scheduled down times may occur. IBM will provide Client at least thirty (30) days' notice for other scheduled down times.

#### b. Emergency Maintenance.

Other non-scheduled down times may occur. IBM shall use all reasonable endeavors to notify Client when these down times occur. The IBM SaaS will not be available during these times. If the IBM SaaS is unavailable during an emergency maintenance situation, IBM will handle the situation as Severity 1.

## 5.2 Updates and Deployment of Updates

### 5.2.1 Deployment of Updates

Any Updates that IBM releases will be deployed during a Scheduled Maintenance Window. While all released Updates must be deployed, IBM will work with Client to determine a mutually agreeable schedule for the deployment of an Update in the production zone, which will occur no later than three (3) months after IBM releases the Update. Client may test Updates in the test zone prior to publishing the Updates in the production zone.

### 5.2.2 Updates to Overall IBM SaaS Environment

An overall service environment update improves quality of service attributes of availability, stability, security, or throughput. IBM will apply service environment updates simultaneously to all aspects of the service environment and Client will not be able to defer these updates. The IBM SaaS environment updates may occur at any time as part of IBM's efforts to continuously improve the IBM SaaS. IBM shall use reasonable efforts to deploy service environment updates in such a manner as to not inhibit IBM's obligations under this ToU.

## 5.3 Back up of Content

Client is responsible for backing up and maintaining all master copies of Client's content. Client's content includes information, software, and data, including, without limitation, hypertext mark-up language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, by Client and any Client End User authorized by Client for processing by the IBM SaaS.

## 5.4 Incident Management

IBM will:

- Manage, track and report on incidents detected within the IBM SaaS
- Direct incidents to the appropriate IBM administrator or technical specialists;
- Provide a web-based support portal and forum for submitting and working incidents.

## 5.5 Severity Classification and Target Incident Response Time

For the IBM SaaS Production Environment, the incident response time is the elapsed time measured from the time in which the incident is reported to IBM by website to an active acknowledgement by IBM support

staff of the problem. No PHI data can be included in reporting an incident IBM will use commercially reasonable efforts to meet the incident response time objectives described below.

**Severity Classifications and Definitions:**

Severity	Severity Definition	Example	Response Time Objectives During Support Hours
1	Critical business impact/service down: Business critical functionality is inoperable or critical interface has failed. This usually applies to a production environment and indicates an inability to access services resulting in a critical impact on operations. This condition requires an immediate solution.	Oncology user interface is down/not responding for all users.	Reasonable efforts within support hours
2	Significant business impact: A service feature or function is severely restricted in its use or Client is in jeopardy of missing business deadlines.	Users can login but the system is slow to respond	Reasonable efforts within support hours
3	Minor business impact: Indicates the service or functionality is usable and it is not presenting a critical impact on operations.	Screen logistics that do not prevent functionality	Reasonable efforts within support hours
4	Minimal business impact: An inquiry or non-technical request. A request to add a feature or function.	Can you change access rights for a user? Suggesting a new feature to be added	Reasonable efforts within support hours

**6. IBM SaaS Offering Additional Terms**

**6.1 Account Types**

User Accounts: An end user of the IBM SaaS may only be a clinician, licensed to practice medicine, in the country in which the Client Originating Company operates, and is authorized to use the IBM SaaS by the Client Originating Company (“Client End User”). Client controls the Client End Users who may access a user account or use the IBM SaaS. This control is exercised through a proxy server deployed by Client and/or an SAML (Security Assertion Markup Language) identity provider on Client’s site, which must be deployed before Client allows any Client End User access to the IBM SaaS. Client will route all user traffic for the IBM SaaS through the proxy server. Client will set the proxy server to perform a SSL TLS (Transport Layer Security) confirmation of the proxy server in the IBM SaaS, which does the same in reverse. If Client elects to implement a SAML identity manager authentication for Client End User access, it is Client’s responsibility to ensure and control the accuracy and authenticity of the list of Client End Users that are provided access to the IBM SaaS as well as the authentication information provided through Client’s proxy.

Client understands and agrees that Client is solely responsible for (i) controlling all Client End User accounts, including without limitation, verification of the identity of any Client End User; and (ii) ensuring that only authorized Client End Users access an end user account or use the IBM SaaS. All Client End Users are provided a copy of an end user terms of use upon initial access to the IBM SaaS to which they must agree

**6.2 Operational Environments**

The IBM SaaS operational environment is comprised of one dedicated production environment (“Production Environment”) and one dedicated non-production environment (“Test Environment”). The Production Environment of the IBM SaaS is accessible to all of Client End Users. It provides responses to clinical trial match requests based solely on the IBM SaaS code and content that has been promoted to

the Production Environment. When required, IBM will perform all code publishing to the Production Environment.

The Test Environment will be used for any necessary testing of the IBM SaaS and is not in a production mode where the IBM SaaS programs are run and relied on by Client and sites for daily operations and intended uses by end users.

### **6.3 Data Center Location**

The IBM SaaS is located in an IBM owned or controlled United States data center. It can only be deployed to Client End Users that have network connectivity with minimum latency of less than 500 milliseconds from Client's proxy server to the IBM SaaS. Client is responsible for all network connectivity and quality between Client's proxy server and the Client End User.

### **6.4 Language Limitations**

Client will provide content, test patient data and production patient data in English-language textual data. The IBM SaaS is not configured to process languages other than English. Grammatical errors and similar improper English language conventions in the content may reduce the effectiveness of the IBM SaaS.

### **6.5 Data Collection**

Client is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect personal information from Client (Client's employees and contractors) related to the use of the IBM SaaS, through tracking and other technologies. IBM does so to gather usage statistics and information about effectiveness of our IBM SaaS for the purpose of improving user experience and/or tailoring interactions with Client. Client confirms that it will obtain or have obtained consent to allow IBM to process the collected personal information for the above purpose within IBM, other IBM companies and their subcontractors, wherever we and our subcontractors do business, in compliance with applicable law. IBM will comply with requests from Client's employees and contractors to access, update, correct or delete their collected personal information.

### **6.6 Derived Benefit Locations**

Where applicable, taxes are based upon the location(s) Client identifies as receiving benefit of the IBM SaaS. IBM will apply taxes based upon the business address listed when ordering an IBM SaaS as the primary benefit location unless Client provides additional information to IBM. Client is responsible for keeping such information current and providing any changes to IBM.

### **6.7 Audit Rights**

Client shall retain records to substantiate (i) that each Patient corresponds to a unique individual for purposes of calculating charges; (ii) the correct and true identity of all end users; (iii) that only authorized Client End Users use the Cloud Service.

Upon IBM's request, but no more frequently than annually (unless in response to a good-faith dispute), Client will permit an independent accounting firm chosen by IBM to have access during normal business hours to such Client records and information as may be necessary to determine the correctness of Charges incurred under this Agreement. Client will provide its full cooperation in such an audit, which must be communicated in advance by IBM with a two business days written notice.

### **6.8 Links to Third Party Websites or Other Services**

If Client or Client's End User transmits content to a third party website or receives information from it or other services that are linked to or made accessible by the IBM SaaS, Client and Client's End Users provide IBM with the consent to enable any such transmission of content, but such interaction is solely between Client, the Client's End User and the third party website or service. IBM makes no warranties or representations about such third party sites or services, and shall have no liability for such third party sites or services.

### **6.9 Transactions**

IBM is not responsible for any matters related to the offer and sale of products or services by and among Client and Client's End Users ("Transactions") regardless of whether these Transactions are communicated by or among such entities as a result of the IBM SaaS.

### **6.10 Guaranty of Compliance**

Client is solely responsible for ensuring that Client and Client End Users' activities comply with all applicable laws, regulations, standards and practices. Client is solely responsible for ensuring that

Client's End Users comply with the end user terms of use and obtain all necessary consents of patients relating to the use, transfer and storage of EMRs, any protected health information and any other patient information. Client is solely responsible for ensuring that Client complies with all applicable policies of Client's institution and for obtaining any necessary approvals of research ethics boards of Client's institution. Use of the IBM SaaS does not guarantee compliance with any law, regulation, standard or practice. Any directions, suggested usage, or guidance provided by the IBM SaaS does not constitute legal, accounting, medical or other professional advice, and Client is cautioned to obtain Client's own legal or other expert counsel

Client understands the IBM SaaS was developed and contains information which was solely based on and originally generated for use in the United States; there is no specific information in the IBM SaaS based on any other jurisdiction.

Client understands and agrees the IBM SaaS is intended to assist oncology clinicians in making decisions, but that IBM has no responsibility whatsoever for the conduct of Client's business or patient care. Client agrees that any use by Client or Client's End Users of the IBM SaaS will not diminish Client or Client End Users responsibility for patient care. In undertaking and providing the IBM SaaS under this ToU, IBM is acting solely as a services provider and does not purport to be engaged in the practice of medicine or any other professional clinical or licensed activity, and the IBM SaaS consists solely of support to facilitate providing information to Client and Client's medical or other health care professionals who must evaluate the safety and security of the IBM SaaS, and exercise Client's/Client's medical or other health care professionals independent professional judgment regarding any care decisions resulting from the use of the IBM SaaS, and not in reliance thereon. IBM and its development and content providers, including without limitation, Memorial Sloan Kettering Cancer Center, assume no responsibility or liability for the accuracy, completeness, propriety, necessity, security or advisability of the IBM SaaS and any medical information which is accessed through the use of the IBM SaaS, other than the responsibilities and liabilities stated in this ToU and in the Agreement

In addition, the content and information provided through the IBM SaaS was current when published but such information, including any relevant guidelines, may no longer be current or reliable. IBM may include updated IBM SaaS content during scheduled updates, provided that IBM's content providers, including Memorial Sloan Kettering Cancer Center furnish more current information. IBM currently plans 3-4 updates annually.

#### **6.11 Protected Health Information.**

Client and Client's End Users will be able to upload into the IBM SaaS a patient's health information. Client understands and agrees, and will ensure all Client's End Users understand and agree that the IBM SaaS is provided from a data center located in the United States. Client is solely responsible for compliance, with respect to itself and any Client End User, with all applicable privacy laws or regulations under Client Originating Company's jurisdiction. Client represents and warrants it shall obtain all required patient consents to enable the transmission, storage and use of such patient's health information to a data center located in the United States. Client is solely responsible and will indemnify IBM for any claims, damages, penalties, fines or any other losses for failing to obtain such consent.

#### **6.12 Regulatory Considerations**

- a. The IBM SaaS is not intended for use as a medical device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (FDC Act), as amended, Section 2 of Canada's Food and Drugs Act, as amended, or similar definition by global or local regulatory authorities ("Device").
- b. Despite the foregoing intent, Client understands and agrees the IBM SaaS may be deemed subject to regulation by one or more applicable regulatory authorities. If this contingency occurs during the Subscription Period, and IBM is not able or willing to comply, IBM may decide to continue to make the IBM SaaS available to Client; otherwise, IBM shall terminate the agreement. Such termination shall be at no penalty to IBM and shall not entitle Client to any refunds, credits or offsets under this ToU or any other agreement with IBM.
- c. At no time shall Client initiate contact with regulatory authorities regarding the IBM SaaS. If Client has any questions or concerns about regulatory requirements associated with the IBM SaaS, Client should raise them with IBM. As between Client and IBM, IBM has sole responsibility for communicating with any or all regulators regarding the IBM SaaS, unless such regulators contact Client directly, in which case Client shall notify IBM immediately while cooperating with such regulators to the extent required by law.

- d. If IBM submits a future iteration of the IBM SaaS to medical device regulation, Client shall provide reasonable requested support and cooperation with IBM to facilitate applicable regulatory filings and postmarket regulatory compliance. In this regard, IBM may request the pertinent materials, data and information, including without limitation, descriptions of Client health data, Client content, Client electronic health records systems, Client documents regarding standards of care, and information about adverse events and similar information needed for post market reporting and all other regulatory requirements. IBM acknowledges that Client might be limited to disclose some information in order to comply with the applicable laws.
- e. Client shall conduct appropriate training of the IBM SaaS to Client's End Users.

### **6.13 Publicity**

This ToU does not confer any rights to Client to use in advertising, publicity or other marketing activities any name, trade name, trademark, or other designation of IBM, including any contraction, abbreviation, or simulation of any of the foregoing, without prior written agreement, and Client agrees not to use or refer to the IBM SaaS, this ToU its terms in any such activities without the express written approval of the other party.

### **6.14 Client Use of the IBM SaaS**

Client may use the IBM SaaS as authorized by IBM on condition that:

- a. Client complies with the terms of this ToU, all relevant laws, regulations and licensing requirements that apply to the access and use of the IBM SaaS and the delivery of healthcare services;
- b. Client ensures that only Client End Users are authorized to access the IBM SaaS;
- c. Client will obtain the required trainings regarding the authorized permissions and intended uses of the IBM SaaS prior to using the IBM SaaS for any purpose. A self-paced online course and on-site in person training are available as additional lab services;
- d. Any information Client submits or inputs into the IBM SaaS will be accurate and complete to the best of Client's knowledge;
- e. Client does not:
  - (1) use the IBM SaaS as a substitute for independent medical research and judgment;
  - (2) use, copy, modify, or make the IBM SaaS or any component thereof or information contained therein available, in whole or part, to third parties, except as expressly permitted in this ToU;
  - (3) reverse assemble, reverse compile, and otherwise translate, or reverse engineer the IBM SaaS, unless expressly permitted by applicable law without the possibility of contractual waiver;
  - (4) use any of the IBM SaaS components, files, modules, audio-visual content, or related offering materials separately from that of the IBM SaaS;
  - (5) rent, sublicense, or lease the IBM SaaS;
  - (6) create Internet "links" to or from the IBM SaaS; or
  - (7) "frame" or "mirror" any content forming part of the IBM SaaS, other than on Client's own intranets in connection with Client's authorized use of the IBM SaaS.
- f. Use of the IBM SaaS by Client's End Users is subject to the end user terms of use.
- g. Limitations. The limitations of liability and disclaimers contained in the Agreement also apply to Memorial Sloan Kettering Cancer Center and any of IBM's IBM SaaS solution developers, content providers and suppliers and any of their affiliates, licensors, and their respective directors, officers employees or agents and is the maximum for which those parties are collectively responsible. Client's End Users are not third party beneficiaries under the Agreement, and Client shall hold IBM harmless of any Client's End User claim.

## Appendix A

### 1. IBM Watson for Oncology

IBM Watson for Oncology, trained by Memorial Sloan Kettering, is designed to assist oncology clinicians making treatment decisions for individual patients.

The IBM SaaS offering is a cognitive computing decision support system that includes the ability to:

- Analyze patient data against thousands of historical cases and insights gleaned from thousands of Memorial Sloan Kettering Cancer Center physician and analyst hours.
- Provide treatment options to help oncologists make informed decisions. These treatment options are based on literature curated by Memorial Sloan Kettering, and over 300 medical journals and 200 textbooks, resulting in almost 15 million pages of text.
- Evolve with the fast-changing field of oncology through periodic training provided by Memorial Sloan Kettering.
- Support first-line medical oncology treatment for breast, lung, colon, and rectal cancers.
- Support second-line medical oncology treatment for lung (NSCLC), colon, and rectal cancers.
- Identify potentially relevant clinical trials via a prepopulated query to [clinicaltrials.gov](http://clinicaltrials.gov)

The IBM SaaS offering includes support for iPad and desktop browsers.