



## IBM Terms of Use – SaaS Specific Offering Terms

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### IBM Cognos TM1 on Cloud

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/).

The ToU is in addition to 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. Should a conflict arise between the General Terms and these SaaS Specific Offering Terms, these SaaS Specific Offering Terms will prevail over the General Terms.

Customer may use the IBM SaaS only if Customer first accepts the Terms of Use. By ordering, accessing or using the IBM SaaS, Customer agrees to the ToU. By clicking an “Accept” button after being presented with these SaaS Specific Offering Terms, you are also accepting the General Terms.

**IF YOU ARE ACCEPTING THE ToU ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU. IF YOU DO NOT AGREE WITH THE ToU OR DO NOT HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU THEN DO NOT IN ANY MANNER USE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED AS PART OF THE IBM SAAS..**

#### Part 1 – IBM Terms

##### 1. IBM SaaS

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

- IBM Cognos TM1 on Cloud
- IBM Cognos Performance Management Modeler on Cloud
- IBM Cognos Performance Management User on Cloud
- IBM Cognos TM1 Jump Start on Cloud
- IBM Cognos TM1 Single Tenant Premium on Cloud
- IBM Cognos TM1 Additional Production Instance on Cloud
- IBM Cognos TM1 Additional Non-Production Instance on Cloud

##### 2. Charge Metrics

The IBM SaaS is sold under the following charge metric(s):

- a. Authorized User is a unit of measure by which the IBM SaaS can be obtained. Customer must obtain separate, dedicated entitlements for each unique Authorized User given access to the the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- b. Access is a unit of measure by which the IBM SaaS may be obtained. An Access is the rights to use the IBM SaaS. Customer must obtain a single Access entitlement in order to use the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- c. Instance is a unit of measure by which the IBM SaaS can be obtained. An Instance is access to a specific configuration of the IBM SaaS. Sufficient entitlements must be obtained for each Instance of the IBM SaaS made available to access and use during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- d. Engagement is a unit of measure by which the services can be obtained. An Engagement consists of professional and/or training services related to the IBM SaaS. Sufficient entitlements must be obtained to cover each Engagement.

### **3. Charges and Billing**

#### **3.1 Billing Options**

The amount payable for the IBM SaaS is specified in a Transaction Document. The billing options for the IBM SaaS subscription fee are as follows:

- a. Entire commitment amount upfront
- b. Monthly (in arrears)
- c. Quarterly (upfront)
- d. Annually (upfront)

The selected billing option will be valid for the length of the term specified in a PoE or a Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of billing cycles in a year.

#### **3.2 Partial Month Charges**

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by IBM that their access to the IBM SaaS is available.

#### **3.3 Overage Charges**

If Customer's actual usage of the IBM SaaS exceeds the entitlement specified in a PoE or Transaction Document, then Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document.

### **4. Account Creation and Access**

Customer is responsible for ensuring that each IBM SaaS User protects their account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS on Customer's behalf.

### **5. Remote Services**

IBM Cognos TM1 Jump Start on Cloud remote service includes up to 80 hours of coaching and assistance including facilitated identification of an initial IBM Cognos TM1 on Cloud (CTM1oC) use case, coaching on project planning and initiation of IBM CTM1oC implementation, coaching on proven practices for creating IBM CTM1oC reports, and coaching on maintenance and administration of IBM CTM1oC. Services are purchased per Engagement and expire 90 days from purchase regardless of whether all hours have been used.

### **6. Renewal of a Subscription Period**

#### **6.1 Automatic Renewal of a Subscription Period**

If Customer's PoE designates the subscription renewal as automatic, Customer may renew Customer's expiring IBM SaaS Subscription Period by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of the Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, THE EXPIRING IBM SaaS SUBSCRIPTION PERIOD IS AUTOMATICALLY RENEWED FOR EITHER A ONE YEAR TERM OR THE SAME DURATION AS THE ORIGINAL TERM UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. OTHERWISE, CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

#### **6.2 Continuous Billing**

If Customer's PoE designates the subscription renewal as billing will continue following the end of the Subscription Period, Customer will continue to have access to the IBM SaaS and will be billed for usage of the IBM SaaS on a continuous billing basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer must provide IBM with ninety (90) days written notice requesting cancellation of their IBM SaaS. Upon cancellation of Customer's access to the IBM SaaS, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

### **6.3 Customer Renewal Required**

If Customer's PoE designates the subscription renewal as one that terminates, the IBM SaaS offering will not renew at the end of the initial Subscription Period. In order to continue use of the IBM SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the IBM SaaS. Please contact an IBM sales representative or Customer's reseller, as applicable, to obtain a new IBM SaaS subscription.

## **7. Technical Support**

During the Subscription Period, technical support is provided for the IBM SaaS as set forth at <http://www-01.ibm.com/software/analytics/varicent/customercenter/saas.html> or a subsequent URL provided by IBM. Technical support is included with the IBM SaaS and is not available as a separate offering.

## **8. IBM SaaS Offering Additional Terms**

### **8.1 Base Offering**

Each IBM SaaS includes one production instance, one non-production instance, one performance management modeler, up to thirty-two gigabytes (32GB) of memory (RAM) and 200GB shared folder space for the TM1 database tier. The Base offering is hosted in a multi-tenant environment with a managed hypervisor.

### **8.2 Single Tenant Premium**

If the IBM SaaS is designated as "Single Tenant Premium", the IBM SaaS includes up to five hundred and twelve gigabytes (512GB) of memory (RAM) for the TM1 database tier and is hosted in a single-tenant environment with managed hypervisor and/or a dedicated physical server.

### **8.3 Non-Production Limitation**

If the IBM SaaS is designated as "Non-Production", the IBM SaaS can only be used as part of the Customer's non-production activities, including but not limited to testing, performance tuning, fault diagnosis, benchmarking, staging, quality assurance activity and/or developing internally used additions or extensions to the IBM SaaS using published application programming interfaces.

### **8.4 Cumulative Entitlements**

Authorized User and Access are not alternative means for entitling usage of the IBM SaaS offering. Customers must obtain an Access entitlement, as well as sufficient Authorized User entitlements to cover the IBM SaaS Users of the IBM SaaS.

### **8.5 No Guarantee of Compliance**

The IBM SaaS can be used to help Customer meet compliance obligations, which may be based on laws, regulations, standards or practices. Any directions, suggested usage, or guidance provided by the IBM SaaS does not constitute legal, accounting, or other professional advice, and Customer is cautioned to obtain its own legal or other expert counsel. Customer is solely responsible for ensuring that Customer and Customer's activities, applications and systems comply with all applicable laws, regulations, standards and practices. Use of this IBM SaaS does not guarantee compliance with any law, regulation, standard or practice.

Customer further acknowledge that the IBM SaaS is a tool for assisting the Customer and not a substitute for the skill, judgment and experience of Customer's management and employees in giving advice to third parties and in making investment and other business and risk management decisions. Customer is responsible for the results obtained from the use of the IBM SaaS.

### **8.6 Microsoft No High Risk Use**

Customer may not use the Microsoft products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

## 8.7 Prohibited Uses

Customer may not use or authorize others to use the IBM SaaS or any part of the IBM SaaS, alone or in combination with other products, in support of any of the following High Risk Activities: design, construction, control, or maintenance of nuclear facilities, mass transit systems, air traffic control systems, weapons systems, or aircraft navigation or communications, or any other activity where program failure could give rise to a material threat of death or serious personal injury.

### User Roles

Notwithstanding any provision in the Agreement, IBM Cognos Performance Management User on Cloud is not authorized to use any of the following components or functions of the IBM SaaS:

- IBM Cognos Performance Modeler
- IBM Cognos TM1 Architect
- IBM Cognos TM1 Perspectives
- IBM Cognos TM1 Turbo Integrator
- IBM Cognos TM1 Operations Console
- IBM Cognos TM1 Applications for administration functionality
- IBM Cognos TM1 Applications Workflow for administration functionality; except review and approval of workflows
- Functionality provided via Remote Desktop Protocol

# IBM Terms of Use

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## Part 2 – Country-unique Terms

The following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unmodified and in effect. This Part 2 is comprised of amendments to this Terms of Use and is organized as follows:

- Americas country amendments;
- Asia Pacific country amendments; and
- Europe, Middle East, and Africa country amendments.

### AMERICAS COUNTRY AMENDMENTS

#### BELIZE, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, AND PANAMA

##### 6.1 Automatic Renewal of a Subscription Period

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE":*

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

#### ARGENTINA, BRAZIL, CHILE, COLUMBIA, ECUADOR, MEXICO, PERU, URUGUAY, VENEZUELA

##### 6.1 Automatic Renewal of a Subscription Period

Does not apply for Public Bodies who are subject to the applicable Public Sector Procurement Legislation.

#### BRAZIL

##### 6.1 Automatic Renewal of a Subscription Period

*The following is added after the second paragraph:*

The transaction document will describe the process of the written communication to Customer containing the applicable price and other information for the renewal period.

#### UNITED STATES OF AMERICA

##### 6.1 Automatic Renewal of a Subscription Period

*The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 6.1 Automatic Renewal of a Subscription Period:*

**CUSTOMER MAY TERMINATE THE IBM SaaS AT ANY TIME AFTER THE END OF THE INITIAL SUBSCRIPTION PERIOD ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING IBM SaaS SUBSCRIPTION PERIOD. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.**

### ASIA PACIFIC COUNTRY AMENDMENTS

## **BANGLADESH, BHUTAN, AND NEPAL**

### **6.1 Automatic Renewal of a Subscription Period**

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 6.1 Automatic Renewal of a Subscription Period:*

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

## **EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS**

### **BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, AND UNITED ARAB EMIRATES**

#### **6.1 Automatic Renewal of a Subscription Period**

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 6.1 Automatic Renewal of a Subscription Period:*

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

## Appendix A

IBM Cognos TM1 on Cloud (“IBM SaaS”) is a collaborative, enterprise-scalable budgeting, planning, analytics, profitability, modeling, scorecard and reporting solution. These applications are supported by Cognos TM1's patented, 64-bit, in-memory online analytical processing (OLAP) server, which provides on-demand analytics of complex multidimensional data with real-time analysis.

IBM SaaS includes an administrative client that enables administrators to model and deploy budgeting, planning, analytics, profitability, modeling, reporting, metrics and scorecard solutions. It also includes a web interface, Excel plug-in, mobile app and distributed client to perform data entry, access reports, key performance indicators and metrics, and perform ad-hoc analysis.

### 1. Disaster Recovery

In the event that a catastrophic condition arises, catastrophic being defined as "Force Majeure" meaning acts of God, terrorism, labor action, fire, flood, earthquake, riot, war, governmental acts, orders or restrictions, viruses, denial of service attacks and other malicious conduct, utility and network connectivity failures, or any other cause of IBM SaaS unavailability that was outside IBM's reasonable control, IBM will restore Client's access to IBM SaaS as follows:

- Standard Option - IBM shall provide the hardware, software and network infrastructure in IBM's data-center network that will enable Customer to resume access to the IBM SaaS within 14 days.

The environment will be restored using the most recent Content backup, as described below, with no more than 24 hours of Content loss of the restored Content data set

### 2. Content Backup

The IBM SaaS offering includes Content backup. Backups are taken daily and copied to an off-site location in the event of a Force Majeure event in the primary location. Every 7 days, a full database backup is taken and each subsequent day a comparative differential backup is taken. IBM will retain the last 7 days of daily differential backups and the last 28 days of full backups. Backups are encrypted at rest on a disk-based backup system and during transmission to the offsite location.

### 3. Items for Which IBM May Be Liable for Disaster Recovery Services and Backup Services

Circumstances may arise where, because of a default on IBM's part of its obligations under the Disaster Recovery and Content Backup services set forth above, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), the amount of IBM's liability for all claims in the aggregate arising from or related to the breach of IBM's obligation for Disaster Recovery and Content Backup services shall be included in the liability amount set forth in the Agreement. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

### 4. Items for Which IBM Is Not Liable for Disaster Recovery Services and Backup Services

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- a. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC, CONSEQUENTIAL DAMAGES; OR
- b. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

# Service Level Agreement

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## Appendix B

This Service Level Agreement (SLA) is for the following IBM SaaS:

- IBM Cognos TM1 on Cloud
- IBM Cognos Performance Management Modeler on Cloud
- IBM Cognos Performance Management User on Cloud
- IBM Cognos TM1 Single Tenant Premium on Cloud
- IBM Cognos TM1 Additional Production Instance on Cloud

IBM provides this SLA to its Customers subject to the following terms. The version of this SLA that is current at the commencement or renewal of the term of your subscription will apply. You understand that this SLA does not constitute a warranty to you.

### 1. Definitions

- a. "Authorized Contact" means the individual you have specified to IBM who is authorized to submit Claims under this SLA.
- b. "Availability Credit" means the remedy IBM will provide for a validated Claim. The Availability Credit will be applied in the form of a credit or discount against a future invoice of subscription charges for the Service.
- c. "Claim" means a claim submitted by your Authorized Contact to IBM pursuant to this SLA that a Service Level has not been met during a Contracted Month.
- d. "Contracted Month" means each full month during the term of the Service measured from 12:00 a.m. Eastern US Time on the first day of the month through 11:59 p.m. Eastern US Time on the last day of the month.
- e. "Customer" means an entity subscribing for the Service directly from IBM which is not in default of any material obligations, including payment obligations, under its contract with IBM for the Service.
- f. "Downtime" means a period of time during which production system processing for the Service has stopped and all of your users are unable to use all aspects of the Service for which they have appropriate permissions. By way of clarification, there is no "Downtime" if any user can use any aspect of the Service for which they have appropriate permissions. Downtime does not include the period of time when the Service is not available as a result of:
  - Planned System Downtime.
  - Force Majeure.
  - Problems with Customer or third party applications, equipment or data.
  - Customer or third party acts or omissions (including anyone gaining access to the Service by means of your passwords or equipment).
  - Failure to adhere to required system configurations and supported platforms for accessing the Service.
  - IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf
- g. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- h. "Force Majeure" means acts of God, terrorism, labor action, fire, flood, earthquake, riot, war, governmental acts, orders or restrictions, viruses, denial of service attacks and other malicious conduct, utility and network connectivity failures, or any other cause of Service unavailability that was outside IBM's reasonable control.
- i. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.



- j. “Service” means the IBM SaaS offerings to which this SLA applies, named on the first page of this SLA. This SLA applies to each Service individually and not in combination.
- k. “Service Level” means the standard set forth below by which IBM measures the level of service it provides in this SLA.

**2. Availability Credits**

In order to be eligible to submit a Claim you must have logged a support ticket for each Event with the IBM customer support help desk for the applicable Service, in accordance with IBM procedure for reporting Severity 1 support issues. You must provide all necessary detailed information about the Event, including the time you were first impacted by the Event, and reasonably assist IBM with the diagnosis and resolution of the Event to the extent required for Severity 1 support tickets. Such ticket must be logged within twenty-four (24) hours of your first becoming aware that the Event has impacted your use of the Service.

Your Authorized Contact must submit your Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month which is the subject of the Claim.

Your Authorized Contact must provide to IBM all reasonable details regarding the Claim, including but not limited to, detailed descriptions of all relevant Events and the Service Level claimed not to have been met.

IBM will measure internally total combined Downtime during each Contracted Month. Availability Credits will be based on the duration of the Downtime measured from the time you report that you were first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit corresponding to the total combined availability during each Contracted Month, based on the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.

For Bundled Services (individual Services packaged and sold together for a single combined price), the Availability Credit will be calculated based on the single combined monthly price for the Bundled Service, and not the monthly subscription fee for each individual Service. You may only submit Claims relating to one individual Service in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one Service in a bundle in any Contracted Month.

For Services purchased as part of an Enterprise Software and Services Option (ESSO), Software and Services Special Option (SSSO), or Open Infrastructure Offering (OIO) relationship, the Availability Credit will be calculated based on the then-current published Relationship Suggested Volume Price (RSVP) for the Service in effect for the Contracted Month which is the subject of the Claim. You will be eligible for one third (1/3) of the Availability Credit.

The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed 10 percent (10%) of one twelfth (1/12th) of the annual charge paid by you to IBM for the Service.

IBM will use its reasonable judgment to validate Claims based on information available in IBM’s records, which will prevail in the event of a conflict with data in your records.

THE AVAILABILITY CREDITS PROVIDED TO YOU IN ACCORDANCE WITH THIS SLA ARE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM.

**3. Service Levels – Availability of Service during a Contracted Month**

Availability Percentage	Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)
99% - 99.75%	2%
95% - 98.99%	5%
Less than 95.0%	10%

“Availability Percentage” is calculated as: (a) the total number of minutes in a Contracted Month, minus (b) the total number of minutes of Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month, with the resulting fraction expressed as a percentage.

Example: 476 minutes total Downtime during Contracted Month

43,200 total minutes in a 30 day Contracted Month -- 476 minutes Downtime = 42,724 minutes	
43,200 total minutes in a 30 day Contracted Month	= 5% Availability Credit for 98.9% Availability during the Contracted Month

#### 4. Exclusions

This SLA is made available only to IBM Customers. This SLA does not apply to the following:

- Beta and trial Services.
- Non-production environments, including but not limited to test, disaster recovery, Q&A, or development.
- Claims made by an IBM Customer's users, guests, participants of the Service.
- If you have breached any material obligations under the Terms of Use, Acceptable Use Policy or your contract for the Service, including without limitation, breach of any payment obligations.