



IBM Terms of Use – SaaS Specific Offering Terms

IBM Performance Management

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/.

In the event of a conflict, the SaaS Specific Offering Terms will prevail over the General Terms. By ordering, accessing or using the IBM SaaS, Customer 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 Monitoring (SaaS)
- IBM Application Diagnostics (SaaS)
- IBM Application Performance Management (SaaS)
- IBM Monitoring (SaaS) Step up for existing IBM Tivoli Monitoring Customers
- IBM Monitoring (SaaS) Step up for existing IBM Tivoli Monitoring for Virtual Environments Customers
- IBM Monitoring (SaaS) Step up for existing IBM SmartCloud Monitoring Customers
- IBM Monitoring (SaaS) Step up for existing IBM Tivoli Composite Application Manager for Microsoft Applications Customers
- IBM Monitoring (SaaS) Step up for existing IBM SmartCloud Application Performance Management Entry Customers
- IBM Application Diagnostics (SaaS) Step up for existing IBM Tivoli Composite Application Manager for Application Diagnostics Customers
- IBM Application Diagnostics (SaaS) Step up for existing IBM Application Performance Diagnostics Customers
- IBM Application Performance Management (SaaS) Step up for existing IBM Tivoli Composite Application Manager for Applications 3 Agent Pack Customers
- IBM Application Performance Management (SaaS) Step up for existing IBM Tivoli Composite Application Manager for Applications Full Agent Pack Customers
- IBM Application Performance Management (SaaS) Step up for existing IBM Tivoli Composite Application Manager for Transactions Customers
- IBM Application Performance Management (SaaS) Step up for existing IBM SmartCloud® Application Performance Management Customers

2. Charge Metrics

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

- a. **Average Managed Virtual Server** is a unit of measure by which the IBM SaaS can be obtained. A server is a physical computer that is comprised of processing units, memory, and input/output capabilities and that executes requested procedures, commands, or applications for one or more users or client devices. Where racks, blade enclosures, or other similar equipment is being employed, each separable physical device (for example, a blade or a rack-mounted device) that has the required components is considered itself a separate server. A Virtual Server is either a virtual computer created by partitioning the resources available to a physical server or an unpartitioned physical server. Sufficient Average Managed Virtual Server entitlements must be obtained to cover the average number of Virtual Servers managed by the IBM SaaS during the measurement period specified in Customer'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 Partial Month Charges

The partial month charge is a pro-rated daily rate that will be charged to Customer. The partial mMonth 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.

3.2 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

When IBM SaaS Users register for an account ("Account"), IBM may provide the IBM SaaS User with an Account identification and password. Customer is responsible for ensuring that each IBM SaaS User manages and keeps their Account information current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

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. IBM SaaS Subscription Period Renewal Options

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

5.1 Automatic Renewal

If Customer's PoE states that Customer's renewal is automatic, Customer may terminate the expiring IBM SaaS Subscription Period by written request to Customer'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 Subscription Period as set forth in the PoE.

5.2 Continuous Billing

When the PoE states that Customer's renewal is continuous, Customer 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, Customer will need to provide IBM or its IBM Business Partner with ninety (90) days written notice requesting that Customer's IBM SaaS be cancelled. Upon cancellation of Customer's access, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

5.3 Customer Renewal Required

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

6. Technical Support

Technical support for the IBM SaaS is available during the subscription period.

Email Support & SaaS Support Portal Hours of Operation are as follows:

8:00 a.m. – 8:00 p.m. Eastern Standard Time zone, U.S., Monday – Friday (excluding holidays)

Support Hotline: 1-855-221-1166 in the U.S.

Email: support@ibmserviceengage.com

After Hours & System Down Support:

After Hours & System Down Support is available only for Severity 1 issues on business days, weekends, and holidays.

More information about hours of availability, email addresses, online problem reporting systems, and other technical support communication vehicles and processes are described in the IBM Software as a Service Support Handbook and applies to the IBM SaaS unless stated otherwise in this section.

Severity	Severity Definition	Response Time Objectives	Response Time Coverage
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.	Within 1 hour	24x7
2	Significant business impact: A service business feature or function of the service is severely restricted in its use or you are in jeopardy of missing business deadlines.	Within 2 business hours	M-F business hours
3	Minor business impact: Indicates the service or functionality is usable and it is not a critical impact on operations.	Within 4 business hours	M-F business hours
4	Minimal business impact: An inquiry or non-technical request	Within 1 business day	M-F business hours

7. IBM SaaS Offering Additional Terms

7.1 Safe Harbor Compliance

IBM abides by the U.S. - EU Safe Harbor Framework as set forth by the United States Department of Commerce regarding the collection, use and retention of information collected from the European Union. For more information about Safe Harbor or to access IBM's certification statement, go to <http://www.export.gov/safeharbor/>.

7.2 Cookies

Customer is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect personal information from Customer (your 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 Customer. Customer 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 Customer's employees and contractors to access, update, correct or delete their collected personal information.

7.3 Step up Limitation

For IBM SaaS offerings designated as "Step-up for existing Customers" ("Step-up SaaS"), customer must have previously acquired appropriate license entitlements to the associated IBM program as identified in the name of the Step-up SaaS offering. For example, Customer who purchases IBM Monitoring (SaaS) Step up for existing IBM Tivoli Monitoring Customers must have licensed entitlements to the associated IBM program of IBM Tivoli Monitoring. Customer's entitlements to the Step-up SaaS cannot exceed Customer's entitlements to the associated IBM program.

When acquiring Step-up SaaS, Customer may not use the same associated IBM program license entitlements within their on-premise installed environment as well as with the Step-up SaaS entitlements. For example, if Customer has 23 Managed Virtual Server entitlements to the associated IBM program and chooses to purchase 10 Step-up SaaS Average Managed Virtual Server entitlements, Customer can monitor 10 Step-up SaaS Average Managed Virtual Servers from the IBM SaaS environment and 13 Managed Virtual Servers from the software installed on-premise.

The Step-up SaaS does not include Subscription and Support for the associated IBM program. Customer represents they have acquired the applicable (1) license entitlements and (2) Subscription and Support for the associated IBM program(s). During the Subscription Period of the Step-up SaaS, Customer must

maintain current Subscription and Support for the IBM program entitlements used in conjunction with the Step-up SaaS entitlements. In the event either Customer's license to use the associated IBM program(s) or Customer's Subscription and Support for the associated IBM program(s) is terminated, Customer's right to use the Step-Up SaaS will terminate.

7.4 Derived Benefit Locations

Where applicable, taxes are based upon the location(s) Customer 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 Customer provides additional information to IBM. Customer is responsible for keeping such information current and providing any changes to IBM.

Appendix A

1. IBM Monitoring (SaaS)

The IBM Monitoring (SaaS) provides end-user experience and resource monitoring to alert users to problems with applications and help resolve them quickly and efficiently.

Entry users have the following capabilities:

- IBM Application Performance Management UI (APM UI) allows users to view the health of applications and drill down to see more details such as related events and KPIs for the components associated with that application.
- Automatically discovers and defines application structure, which can be modified or removed.
- Installs and configures agents automatically, with little to no manual intervention required.
- Allows users to identify real end user experience for the application with response time broken down across components.
- Allows users to see key health metrics for all monitored resources.
- Allows users to create and modify thresholds to visually identify issues and receive alerts.

2. IBM Application Diagnostics (SaaS)

The IBM Application Diagnostics (SaaS) provides deep diagnostic information to pinpoint the root cause of application performance issues, so they can be resolved quickly.

Diagnostics users have the following capabilities:

- IBM Application Performance Management UI (APM UI) allows users to view the health of applications and drill down to see more details such as related events and KPIs for the components associated with that application.
- Automatically discovers and defines application structure, which can be modified or removed.
- Installs and configures agents automatically, with little to no manual intervention required.
- Allows users to see key health metrics for their application servers.
- Breaks performance down to the code level and includes key diagnostic information such as context data and stack traces.

3. IBM Application Performance Management (SaaS)

The IBM Application Performance Management (SaaS) provides end-user experience, transactions tracking, and resource monitoring to alert users to problems with applications and help resolve them quickly and efficiently.

Users have the following capabilities:

- IBM Application Performance Management UI (APM UI) allows users to view the health of applications and drill down to see more details such as related events and KPIs for the components associated with that application.
- Automatically discovers and defines application structure, which can be modified or removed.
- Installs and configures agents automatically, with little to no manual intervention required.
- With Transactions Tracking, users can identify application performance bottlenecks across all monitored browsers, web servers, and application servers.
- Allows users to identify real end user experience for the application with response time as seen by supported mobile and desktop browser users, broken down across component.
- Allows users to see key health metrics for all monitored resources.
- Allows users to create and modify thresholds to visually identify issues and receive alerts.

- Supports the automatic generation of service requests to resolve an issue in IBM SmartCloud Control Desk, based on IBM Application Performance Management (SaaS) alerts.
- Supports integration of IBM Application Performance Management (SaaS) events into IBM Tivoli Netcool OMNibus.

IBM Terms of Use – IBM Service Level Commitment

Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS and is applicable if specified in Customer’s Proof of Entitlement (PoE) or Transaction Document:

The version of this SLA that is current at the commencement or renewal of the term of Customer’s subscription will apply. Customer understands that the 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 has entitlement for use of the Service at the time of submitting a Claim, and 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, integrations, 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 or system updates, such as but not limited to, when a release, patch or hot fix is applied.
- j. “Service” means the IBM Performance Management (SaaS) production instance to which this SLA applies, as shown 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 Services, and not the monthly subscription fee for each individual Services. You may only submit Claims related 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.

If you purchased the Service from a valid IBM reseller in a remarketing transaction in which IBM maintains primary responsibility for fulfilling the Service and SLA commitments, then the Availability Credit will be based on the then-current published Relationship Suggested Value Price (RSVP) for the Service in effect for the Contracted Month which is the subject of a Claim, discounted at a rate of 50%.

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 during a Contracted Month	Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)
Less than 99.8%	2%
Less than 98.8%	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: 432 minutes total Downtime during Contracted Month

<p>43,200 total minutes in a 30 day Contracted Month - 432 minutes Downtime = 42,768 minutes</p> <hr/> <p>43,200 total minutes in a 30 day Contracted Month</p>	<p>= 2% Availability Credit for 99.0% availability during the Contracted Month</p>
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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 instances, including but not limited to test, disaster recovery, training, Q&A, or development.
- Claims made by an IBM Customer's users, guests, and participants of the Service.
- Services, programs, enabling software or agents running on client systems or third party-provided systems
- 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.