



# IBM Terms of Use – SaaS Specific Offering Terms

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## IBM Performance Management 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/).

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 Monitoring on Cloud
- IBM Application Diagnostics on Cloud
- IBM Application Performance Management on Cloud
- IBM Monitoring on Cloud Step up for existing IBM Tivoli Monitoring Customers
- IBM Monitoring on Cloud Step up for existing IBM Tivoli Monitoring for Virtual Environments Customers
- IBM Monitoring on Cloud Step up for existing IBM SmartCloud® Monitoring Customers
- IBM Monitoring on Cloud Step up for existing IBM Tivoli Composite Application Manager for Microsoft Applications Customers
- IBM Monitoring on Cloud Step up for existing IBM SmartCloud® Application Performance Management Entry Customers
- IBM Application Diagnostics on Cloud Step up for existing IBM Tivoli Composite Application Manager for Application Diagnostics Customers
- IBM Application Diagnostics on Cloud Step up for existing IBM Application Performance Diagnostics Customers
- IBM Application Performance Management on Cloud Step up for existing IBM Tivoli Composite Application Manager for Applications Three Agent Pack Customers
- IBM Application Performance Management on Cloud Step up for existing IBM Tivoli Composite Application Manager for Applications Full Pack Customers
- IBM Application Performance Management on Cloud Step up for existing IBM Tivoli Composite Application Manager for Transactions Customers
- IBM Application Performance Management on Cloud Step up for existing IBM SmartCloud® Application Performance Manager Standard Customers
- IBM Application Performance Management Advanced on Cloud
- IBM Application Performance Management Advanced on Cloud Step up for existing IBM Application Performance Management Advanced Customers
- IBM Application Performance Management Advanced on Cloud Step up for existing IBM Application Performance Management Customers
- IBM Application Performance Management Advanced on Cloud Step up for existing IBM Application Diagnostics Customers
- IBM Application Performance Management Advanced on Cloud Step up for existing IBM Monitoring Customers
- IBM Operations Analytics - Predictive Insights on Cloud for IBM Monitoring on Cloud
- IBM Operations Analytics - Predictive Insights on Cloud for IBM Application Performance Management on Cloud

- IBM Operations Analytics - Predictive Insights on Cloud for IBM Application Performance Management Advanced on Cloud
- IBM Website Monitoring on Cloud for IBM Application Performance Management on Cloud
- IBM Website Monitoring on Cloud for IBM Application Performance Management Advanced on Cloud
- IBM Application Performance Management SAP Extension Pack on Cloud for IBM Application Performance Management on Cloud
- IBM Application Performance Management SAP Extension Pack on Cloud for IBM Application Performance Management Advanced on Cloud
- IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Monitoring on Cloud
- IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Application Performance Management on Cloud
- IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Application Performance Management Advanced on Cloud

## 2. Charge Metrics

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

- 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 Client's Proof of Entitlement (PoE) or Transaction Document.
- Event is a unit of measure by which the IBM SaaS can be obtained. An Event is an occurrence of a specific event that is processed by or related to the use of the IBM SaaS. Sufficient entitlements must be obtained to cover every Event that occurs during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

For IBM Website Monitoring on Cloud, an event corresponds to each step performed in a script. Scripts executed multiple times or with multiple steps are counted as separate Events.

## 3. Charges and Billing

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

### 3.1 Partial Month Charges

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

### 3.2 Overage Charges

If Client's actual usage of the IBM SaaS during the measurement period exceeds the entitlement stated on the PoE, then Client will be invoiced for the overage, as set forth in the Transaction Document.

## 4. Account Access

Client is responsible for ensuring that each IBM SaaS User manages and keeps their account information current. Client 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 Client's behalf.

## 5. 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:

## 5.1 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 Subscription Period as set forth in the PoE.

## 5.2 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.

## 5.3 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.

## 6. 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 telephone, email, online forums and SaaS Support Portal. 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. Technical support is included with the IBM SaaS and is not available as a separate offering.

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.

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 Client is 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**

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.

## **7.3 Step up Limitation**

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

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

The Step-up on Cloud does not include Subscription and Support for the associated IBM program. Client 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 on Cloud, Client must maintain current Subscription and Support for the IBM program entitlements used in conjunction with the Step-up on Cloud entitlements. In the event either Client's license to use the associated IBM program(s) or Client's Subscription and Support for the associated IBM program(s) is terminated, Client's right to use the Step-Up on Cloud will terminate.

## **7.4 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.

## Appendix A

### 1. IBM Monitoring on Cloud

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

Monitoring 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 on Cloud

The IBM Application Diagnostics on Cloud 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 on Cloud

The IBM Application Performance Management on Cloud 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 on Cloud alerts.

- Supports integration of IBM Application Performance Management on Cloud events into IBM Tivoli Netcool OMNIBus.

#### 4. **IBM Application Performance Management Advanced on Cloud**

IBM Application Performance Management Advanced on Cloud provides advanced monitoring capabilities, such as transaction tracking, mobile device monitoring, and code-level diagnostics. It includes all of the capabilities of IBM Application Performance Management and IBM Application Diagnostics, such as:

- 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.
- Breaks performance down to the code level and includes key diagnostic information such as context data and stack traces.
- 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 on Cloud alerts
- Supports integration of IBM Application Performance Management on Cloud events into IBM Tivoli Netcool OMNIBus

#### 5. **IBM Operations Analytics – Predictive Insights on Cloud for IBM Monitoring on Cloud**

IBM Operations Analytics - Predictive Insights on Cloud for IBM Monitoring extends the capability of IBM Monitoring by:

- Automatically analyzing performance management data to define a baseline for "normal" behavior
- Alerting an operator when a metric deviates from that baseline by raising an anomaly in the APM UI
- Allowing an operator to deep dive on the anomaly including pulling in related metrics to allow them to get to root cause quicker.

#### 6. **IBM Operations Analytics – Predictive Insights on Cloud for IBM Application Performance Management on Cloud and IBM Application Performance Management Advanced on Cloud**

IBM Operation Analytics – Predictive Insight on Cloud for IBM Application Performance Management and IBM Application Performance Management Advanced extends the capability of IBM Application Performance Management and IBM Application Performance Management Advanced by:

- Automatically analyzing performance management data to define a baseline for "normal" behavior
- Alerting an operator when a metric deviates from that baseline by raising an anomaly in the APM UI
- Allowing an operator to deep dive on the anomaly including pulling in related metrics to allow them to get to root cause quicker.

#### 7. **IBM Website Monitoring on Cloud for IBM Application Performance Management on Cloud**

IBM Website Monitoring on Cloud extends the capabilities of IBM Application Performance Management or IBM Application Performance Management Advanced by providing visibility into the availability and performance of Client's applications using synthetic transactions that are executed from multiple locations around the world without the need to install any infrastructure.

**8. IBM Website Monitoring on Cloud for IBM Application Performance Management Advanced on Cloud**

IBM Website Monitoring on Cloud extends the capabilities of IBM Application Performance Management or IBM Application Performance Management Advanced by providing visibility into the availability and performance of Client's applications using synthetic transactions that are executed from multiple locations around the world without the need to install any infrastructure.

**9. IBM Application Performance Management SAP Extension Pack on Cloud for IBM Application Performance Management on Cloud**

IBM Application Performance Management SAP Extension Pack on Cloud is targeted at providing high performance data processing and analytics, so it's important to ensure that it's performing optimally. That's precisely what the IBM Monitoring Agent for SAP HANA does, providing key information to determine the health and performance of Client's SAP HANA environment. It's available as part of the IBM Application Performance Management SAP Extension Pack on Cloud component, which is offered as an add-on to either IBM Application Performance Management (APM) on Cloud or IBM APM Advanced on Cloud.

**10. IBM Application Performance Management SAP Extension Pack on Cloud for IBM Application Performance Management Advanced on Cloud**

IBM Application Performance Management SAP Extension Pack on Cloud is targeted at providing high performance data processing and analytics, so it's important to ensure that it's performing optimally. That's precisely what the IBM Monitoring Agent for SAP HANA does, providing key information to determine the health and performance of Client's SAP HANA environment. It's available as part of the IBM Application Performance Management SAP Extension Pack on Cloud component, which is offered as an add-on to either IBM Application Performance Management (APM) on Cloud or IBM APM Advanced on Cloud.

**11. IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Monitoring on Cloud**

IBM Performance Management Data Analytics Extension Pack on Cloud can also monitor the performance and availability of Client's Hadoop system, helping Client to identify and resolve issues while dealing with processing and analyzing large sets of data. This Extension Pack is offered as an add-on to either IBM Monitoring on Cloud, IBM APM on Cloud, or IBM APM Advanced on Cloud.

**12. IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Application Performance Management on Cloud**

IBM Performance Management Data Analytics Extension Pack on Cloud can also monitor the performance and availability of Client's Hadoop system, helping Client to identify and resolve issues while dealing with processing and analyzing large sets of data. This Extension Pack is offered as an add-on to either IBM Monitoring on Cloud, IBM APM on Cloud, or IBM APM Advanced on Cloud.

**13. IBM Performance Management Data Analytics Extension Pack on Cloud for IBM Application Performance Management Advanced on Cloud**

IBM Performance Management Data Analytics Extension Pack on Cloud can also monitor the performance and availability of Client's Hadoop system, helping Client to identify and resolve issues while dealing with processing and analyzing large sets of data. This Extension Pack is offered as an add-on to either IBM Monitoring on Cloud, IBM APM on Cloud, or IBM APM Advanced on Cloud.

## Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS and is applicable if specified in Client’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 Client’s subscription will apply. Client understands that the SLA does not constitute a warranty.

### 1. Definitions

- a. “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 IBM SaaS.
- b. “Claim” means a claim Client submits to IBM that an SLA has not been met during a Contracted Month.
- c. “Contracted Month” means each full month during the term of the IBM SaaS 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.
- d. “Downtime” means a period of time during which production system processing for the IBM SaaS has stopped and Client’s users are unable to use all aspects of the IBM SaaS for which they have permissions. Downtime does not include the period of time when the IBM SaaS is not available because of:
  - A scheduled or announced maintenance outage;
  - Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, etc.);
  - Problems with Client’s or a third party’s applications, equipment, or data;
  - Client’s failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS; or
  - IBM’s compliance with any designs, specifications, or instructions provided to IBM by Client or a third party on Client’s behalf.
- e. “Event” means a circumstance or set of circumstances taken together, resulting in a failure to meet an SLA.

### 2. Availability Credits

- a. To submit a Claim, Client must log a Severity 1 support ticket for each Event with the IBM technical support help desk, within 24 hours of Client first becoming aware that the Event has impacted Client’s use of the IBM SaaS. Client must provide all necessary information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event.
- b. Client must submit the Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month in which the Claim arose.
- c. Availability Credits are based on the duration of the Downtime measured from the time Client reports that Client was first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved SLA during each Contracted Month, as shown in the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.
- d. For Bundled Service (individual IBM SaaS 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 IBM SaaS. Client may only submit Claims relating to one individual IBM SaaS in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one IBM SaaS in a bundle in any Contracted Month.
- e. If Client purchased the IBM SaaS from a valid IBM reseller in a remarketing transaction in which IBM maintains primary responsibility for fulfilling the IBM SaaS and SLA commitments, the Availability Credit will be based on the then-current Relationship Suggested Value Price (RSVP) for



the IBM SaaS in effect for the Contracted Month which is the subject of a Claim, discounted at a rate of 50%.

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

### 3. Service Levels

Availability of the IBM SaaS during a Contracted Month is as follows:

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, expressed as a 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.

Example: 432 minutes total Downtime during Contracted Month

$\frac{43,200 \text{ total minutes in a 30 day Contracted Month} - 432 \text{ minutes Downtime} = 42,768 \text{ minutes}}{43,200 \text{ total minutes in a 30 day Contracted Month}}$	<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 Clients. This SLA does not apply to the following:

- Beta and trial services.
- Non-production environments, including but not limited to, test, disaster recovery, quality assurance, or development.
- Claims made by Client's users, guests, participants and permitted invitees of the IBM SaaS.
- Services, programs, enabling software or agents running on client systems or third party-provided systems