



IBM Terms of Use – SaaS Specific Offering Terms

IBM Cloudant Dedicated Cluster

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/slabd.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, 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 Cloudant Bare Metal Trial Node
- IBM Cloudant Bare Metal Node
- IBM Cloudant Virtual Machine Node
- IBM Cloudant Bare Metal Geospatial Node
- IBM Cloudant Virtual Machine Geospatial Node
- IBM Cloudant with Customer Provided Infrastructure
- IBM Cloudant Bare Metal SMB Node
- IBM Cloudant i2 Virtual Machine Node

For purposes of this Terms of Use, the IBM SaaS offerings designated are Infrastructure as a Service offerings.

2. Charge Metrics

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

- a. 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 in Customer’s Proof of Entitlement (PoE) or Transaction Document.
- b. Legacy Node is a unit of measure by which the IBM SaaS can be obtained. Legacy entitlements are no longer actively marketed by IBM. IBM may, however, at its sole and exclusive discretion, agree to increase Customer’s existing entitlements to use the IBM SaaS under the Legacy Node charge metric. Customer’s use of the IBM SaaS under this charge metric is subject to the charge metric definition specified in the agreement under which Customer originally acquired the rights to use the Legacy IBM SaaS, and only to the entitlement specified in Customer’s PoE.

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.

4. 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:

4.1 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.

4.2 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.

4.3 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.

5. Technical Support

During the Subscription Period and after IBM notifies you that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via email, online forums, and 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 these Terms of Use. Technical support is included with the IBM SaaS and is not available as a separate offering.

The following priorities will apply to the problems submitted against the IBM SaaS:

Priority	Priority 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
All others	Minor business impact: Indicates the service or functionality is usable and it is not a critical impact on operations or is an inquiry or non-technical request.	Within 4 hours	Business hours

More information about hours of availability, email addresses, online problem reporting systems, problem priorities and severities, and other technical support communication vehicles and processes are described in the IBM Cloudant section of the IBM Software as a Service (SaaS) Support Handbook.

6. IBM SaaS Offering Additional Terms

6.1 Safe Harbor Compliance and Data Protection

IBM abides by the U.S. - EU and U.S.-Swiss Safe Harbor Frameworks 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/>.

If Customer makes Personal Data available to the IBM SaaS, as between the Customer and IBM, Customer is considered the sole controller of the Personal Data, and Customer appoints IBM as a processor to process (as those terms are defined in EU Directive 95/46/EC) such Personal Data. IBM will only process such Personal Data to the extent required to make the IBM SaaS available in accordance with this TOU. IBM shall reasonably cooperate with Customer in its fulfillment of any legal requirement, including providing Customer with access to the Personal Data. Customer agrees that IBM may process Content made available to the IBM SaaS, including any Personal Data, across country borders to IBM in the United States. If IBM changes the way it processes or secures Personal Data and such change

causes you to be noncompliant with applicable data protection laws, you may terminate the affected IBM SaaS within 30 days of IBM's notification of the change.

6.2 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.

6.3 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 SaaS Offerings

The following base features are included in each of the IBM SaaS offerings described below.

- Customer receives access to IBM Cloudant Data Layer software, a JavaScript Object Notation (JSON) database. The software includes the ability to store and retrieve data via one (1) Cloudant RESTful API, access to client and mobile SDK libraries, built-in full-text indexing, multi-master replication, and real time analytics via MapReduce.
- For each Instance of the IBM SaaS, IBM will install and configure IBM Cloudant Data Layer software components on one (1) server. Each server will be located in a supported Infrastructure as a Service (IaaS) provider's data center. Customer can select the IaaS provider and the data center locations from a list defined by IBM.
- Customer must acquire a minimum of three (3) Instances per cluster. IBM will configure the associated servers into one or more clusters. IBM, at its sole discretion, will configure one or more load balancers to control system workloads.
- Customer has access to a Technical Account Manager (TAM) to assist with set up and configuration activities. This support becomes available to Customer when notified by IBM that their access to the IBM SaaS is available. The TAM is not a dedicated, full-time resource and is available for up to 15 hours of consultation.

1.1 IBM Cloudant Bare Metal Trial Node

This IBM SaaS offering is intended for customers who want to evaluate IBM Cloudant Data Layer software.

In addition to the base features described above, the following applies:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server dedicated to their activities which is not shared with any other customer.
- The maximum Subscription Period for this offering is 6 months.
- During the Subscription Period, Customer can only use the service for evaluation and non-production purposes.

1.2 IBM Cloudant Bare Metal Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server dedicated to their activities which is not shared with any other customer.

1.3 IBM Cloudant Bare Metal SMB Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server dedicated to their activities which is not shared with any other customer.

1.4 IBM Cloudant Virtual Machine Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server that is configured as a virtual instance. This virtual instance will share hardware and network resources with other customers but the virtual instance will be exclusive to Customer.

1.5 IBM Cloudant i2 Virtual Machine Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server that is configured as a virtual instance. This virtual instance will share hardware and network resources with other customers but the virtual instance will be exclusive to Customer.

1.6 IBM Cloudant Bare Metal Geospatial Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server dedicated to their activities which is not shared with any other customer.
- Customer receives access to geospatial software components that combine the power of Geographical Information Systems (GIS) using the GeoJSON format. Geospatial indexing, geospatial querying, and geospatial sharding functions are provided through the same Cloudant Restful API.

1.7 IBM Cloudant Virtual Machine Geospatial Node

In addition to the base features described above, the following applies to this IBM SaaS offering:

- For each Instance of the IBM SaaS, Customer receives access to one (1) server that is configured as a virtual instance. This virtual instance will share hardware and network resources with other customers but the virtual instance will be exclusive to Customer.
- Customer receives access to geospatial software components that combine the power of Geographical Information Systems (GIS) using the GeoJSON format. Geospatial indexing, geospatial querying, and geospatial sharding functions are provided through the same Cloudant Restful API.

2. IBM Cloudant with Customer Provided Infrastructure

The specifications for this IBM SaaS offering are defined in Customer's legacy agreement established with Cloudant Inc.

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 your subscription will apply. You understand 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 IBM SaaS.
- 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 IBM SaaS measured from 12:00 a.m. GMT on the first day of the month through 11:59 p.m. GMT on the last day of the month.
- e. “Customer” or “you” or “your” means an entity that is subscribing for the IBM SaaS directly from IBM, and that is not in default of any material obligations, including payment obligations, under its contract with IBM for the IBM SaaS.
- f. “Emergency Maintenance” means maintenance to the IBM SaaS that may temporarily limit or suspend the availability of all or part of the IBM SaaS for reasons of public safety, security, maintenance of the IBM SaaS, interoperability of services, data protection, or to perform work that is necessary for operational or technical reasons.
- g. “Event” means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- h. “Excused Downtime” means the time, measured in minutes, in any month during which the IBM SaaS is not available due to any of the following:
 - (1) Force Majeure;
 - (2) Problems with Customer or third party applications, equipment, or data;
 - (3) Customer or third party acts or omissions (including anyone gaining access to the IBM SaaS by means of your passwords or equipment);
 - (4) Failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS;
 - (5) IBM’s compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer’s behalf;
 - (6) Scheduled Maintenance;
 - (7) Emergency Maintenance; or
 - (8) When Amazon Web Services (“AWS”) is the Infrastructure as a Service provider, region-wide failure at AWS using the AWS service dashboard as the indicator.
- i. “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 the IBM SaaS unavailability that was outside IBM’s reasonable control.
- j. “Scheduled Maintenance” means maintenance to the IBM SaaS that IBM schedules for a specific time. During this time the IBM SaaS may be unavailable to Customer.
- k. “Service Level” means the standard set forth below by which IBM measures the level of service it provides in this SLA.

- l. "Total Time" means the time, measured in minutes, in any month.
- m. "Uptime" means the time, measured in minutes, in any month during which the IBM SaaS is available for use by Customer as intended and responds to single document requests within 250 milliseconds at the 99th percentile for all requests at a request volume of 150 TPS or less. Response times will be measured as time to first byte (TTFB).

2. Maintenance Notification

Any Scheduled Maintenance that will result in the IBM SaaS being unavailable will be communicated to Customer's Authorized Contact no less than 1 business day before the commencement of the maintenance.

If Emergency Maintenance is required, IBM will notify Customer's Authorized Contact immediately upon commencement of the maintenance.

3. Availability Credits

- a. 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 IBM SaaS, in accordance with IBM procedure for reporting Priority 1 support issues. You must provide all necessary detailed information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event to the extent required for Priority 1 support tickets.
- b. Your Authorized Contact must submit your Claim for an Availability Credit no later than ten (10) business days after the end of the Contracted Month that is the subject of the Claim.
- c. 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.
- d. IBM will evaluate the Claim within ten (10) business days after receipt of such Claim. IBM will measure internally total Uptime and Excused Downtime during each Contracted Month. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved Service Level during each Contracted Month, as shown in the table below. IBM will not be liable for multiple Availability Credits for the same Event(s) in the same Contracted Month.
- e. 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. You 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.
- f. If you 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, then 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%.
- g. 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.
- h. THE AVAILABILITY CREDITS PROVIDED TO YOU IN ACCORDANCE WITH THIS SLA ARE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM.

4. Service Levels – Availability of the IBM SaaS during a Contracted Month

Achieved Service Level (during a Contracted Month)	Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)
Greater than or equal to 99.9%	0%
Equal to or greater than 99% but less than 99.9%	10%
Equal to or greater than 95% but less than 99%	25%

Less than 95%	100%
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“Achieved Service Level” expressed as a percentage is calculated as: (a) Uptime, divided by (b) the total number of minutes in a Contracted Month minus Excused Downtime.

As an example, the month of March (containing a total of 44,640 minutes) with an excused downtime of 3 minutes and an uptime of 44,194 minutes would be calculated as follows:

$$(44,194 / (44,640 - 3)) \times 100 = .99000 \times 100 = 99\%$$

5. Exclusions

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

- Beta Services.
- Claims made by an IBM Customer’s users, guests, participants and permitted invitees of the IBM SaaS.