



## IBM Terms of Use – SaaS Specific Offering Terms

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### IBM Digital Experience 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 Digital Experience on Cloud 1-Envt Instance
- IBM Digital Experience on Cloud 1-Envt Additional Capacity Instance
- IBM Digital Experience on Cloud 2-Envt Instance
- IBM Digital Experience on Cloud 2-Envt Additional Capacity Instance

#### 2. Charge Metrics

The IBM SaaS is sold under of the following charge metrics 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 specified in Client’s Proof of Entitlement (PoE) or Transaction Document.
- b. 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

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 Setup and On-demand Setup Charges

IBM shall charge a Setup fee upon initial provisioning of the IBM SaaS as specified in the Transaction Document. On-demand Setup charges, as specified in the Transaction Document, will apply when Client requests activation of the On-Demand part.

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

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

##### 4.1 Automatic Renewal

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

##### 4.2 Continuous Billing

When the PoE states that Client’s renewal is continuous, Client will continue to have access to the IBM SaaS and will be billed for the usage of the IBM SaaS on a continuous basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Client will need to provide IBM or its IBM Business

Partner with ninety (90) days written notice requesting that Client's IBM SaaS be cancelled. Upon cancellation of Client's access, Client will be billed for any outstanding access charges through the month in which the cancellation took effect.

### 4.3 Renewal Required

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

## 5. Technical Support

During the Subscription Period and after IBM notifies Client that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via phone, email, 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 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 detailed at:

[http://www.ibm.com/support/entry/portal/product/websphere/ibm\\_digital\\_experience\\_on\\_cloud](http://www.ibm.com/support/entry/portal/product/websphere/ibm_digital_experience_on_cloud).

Severity	Severity Definition	Response Time Objectives	Response Time Coverage	Resolution Time Objectives
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 30 business minutes	24x7	Within 4 business hours
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	Within 12 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	Within 24 business hours
4	Minimal business impact: An inquiry or non-technical request.	Within 1 business day	M-F business hours	Within 48 business hours

### Items Not Covered by Technical Support

Technical support does not include assistance with:

- a. Design and development of applications,
- b. Issues arising out of Client's use of IBM SaaS in other than its specified operating environment, or
- c. Assistance with Client or third-party products and services, or issues arising out of the use of IBM SaaS with Client or third-party products or services.

## 6. IBM SaaS Offering Additional Terms

### 6.1 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 employees and contractors) related to the use of the IBM SaaS, through tracking and other technologies. IBM does so to gather usage statistics and information about effectiveness of our IBM SaaS for the purpose of improving user experience and/or tailoring interactions with Client. Client confirms that it will obtain or have obtained consent to allow IBM to process

the collected personal information for the above purpose within IBM, other IBM companies and their subcontractors, wherever we and our subcontractors do business, in compliance with applicable law. IBM will comply with requests from Client's employees and contractors to access, update, correct or delete their collected personal information.

## **6.2 Derived Benefit Locations**

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

## **6.3 Links to Third-Party Websites or Other Services**

If Client or an IBM SaaS User transmits Content to a third-party website or other service that is linked to, or made accessible by, the IBM SaaS, Client and the IBM SaaS User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Client and the third-party website or service. IBM makes no warranties or representations about such third-party sites or services, and shall have no liability for such third-party sites or services.

## **6.4 Enabling Software Restricted Use**

IBM WebSphere Portal Server (Portal) is distributed with this IBM SaaS, and can only be deployed as part of Client's internal Development and Test environments for internal non-production activities, including but not limited to testing, performance tuning, fault diagnosis, internal benchmarking, staging, quality assurance activity and/or developing internally used additions or extensions to Portal using published application programming interfaces. Client is not authorized to use any part of Portal for any other purposes without acquiring the appropriate production entitlements separate from Client's subscription to the IBM SaaS.

## **6.5 Client-supplied Code and Tests**

Client-supplied code may be deployed on the IBM SaaS with the following restrictions:

- Client supplied code can only use IBM Web Content Manager (WCM) extension APIs such as custom workflow actions, rendering plugins, text providers and others for use within WCM as documented on its Knowledge Center website here: [http://www-01.ibm.com/support/knowledgecenter/SSHRKX\\_8.5.0/mp/wcm/wcm\\_dev\\_plugins.dita](http://www-01.ibm.com/support/knowledgecenter/SSHRKX_8.5.0/mp/wcm/wcm_dev_plugins.dita).
- A Virtual Machine Manager (VMM) may only be configured against the IBM-provided user repository. External security mechanisms may only be configured via supported user assertion techniques (e.g. Security Assertion Markup Language (SAML)).

Client-supplied code must be supplied for deployment in the Portal Application Archive (PAA) format by the Client; and, Client must warrant that they have the right to supply the code to IBM for deployment on the service.

Client must certify that the supplied code operates correctly including functional tests and performance tests on lower tiers before deployment to production. Further, Client may not run any kind of performance stress tests on the IBM SaaS.

## **6.6 Use of Content**

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in the IBM SaaS and support, and grants IBM permission to do the same.

## **6.7 Support for Assets from IBM Collaboration Solutions Catalog**

IBM, at Client's request, may install and configure assets from the IBM Collaboration Solutions Catalog (also known as IBM Green House, [https://greenhouse.lotus.com/plugins/plugincatalog.nsf/home\\_full.xsp](https://greenhouse.lotus.com/plugins/plugincatalog.nsf/home_full.xsp)) on the IBM SaaS.

All these assets (including, but not limited to, Content Template Catalog, Site Builder and Script Portlet) are subject to the terms and conditions specified on IBM Collaboration Solutions Catalog, and Client's use of these assets with the IBM SaaS constitutes acceptance of those terms. Support for use of these assets with the IBM SaaS is provided by IBM on a commercially reasonable basis.

Furthermore, it is not guaranteed that content created using any of these assets will function correctly when the IBM SaaS is upgraded. Any such upgrade is performed without manual migration of the Client-created content using these assets, and such migration remains the responsibility of the Client.

## Appendix A

### 1. IBM SaaS Overview

The IBM SaaS provides a managed digital experience platform for building and managing multi-channel sites for Clients, partners and employees. The IBM SaaS includes portal, web content management, syndication and integration capabilities.

The IBM SaaS includes a software-based VPN connection to Client site for secure and encrypted access to the operating environments.

#### 1.1 Setup and On-demand Setup Services

IBM Digital Experience on Cloud Setup and IBM Digital Experience on Cloud On-demand Setup services include remote consulting, good practices, training and configuration of the IBM SaaS. These services include the following activities:

- Assisting with gathering technical requirements;
- Assisting with configuring user security, VPN connectivity & single sign-on;
- Reviewing Client deployment plans;
- Advising on available documentation, education, and support; and
- Assisting with the coordination of Client and IBM teams during initial setup.

### 2. IBM Digital Experience on Cloud 1-Envt Instance SaaS Capabilities

This SaaS includes a single dedicated runtime operating environment comprising IBM WebSphere Portal and IBM Web Content Manager to create and manage web content and related workflows.

### 3. IBM Digital Experience on Cloud 2-Envt Instance SaaS Capabilities

This SaaS includes a dedicated Production runtime operating environment, and an Authoring environment comprising IBM WebSphere Portal and IBM Web Content Manager to create and manage web content and related workflows.

#### 3.1 Client Success Management Services

IBM provides up to four (4) hours per week of remotely delivered assistance services comprising client success management for the IBM SaaS. These services include, but are not limited to, advising about planned or emergency maintenance activities, assisting in resolution and providing advice on outages, advising about new product capabilities and deployment best practices, introducing other IBM experts where appropriate, gathering Client feedback on the service, and in general, acting as a Client advocate during the term of the subscription.

### 4. Optional Features

#### 4.1 IBM Digital Experience on Cloud 1-Envt Additional Capacity

IBM Digital Experience on Cloud 1-Envt Additional Capacity may be acquired to expand the compute capacity of the IBM Digital Experience on Cloud 1-Envt Instance SaaS by 2 virtual CPUs per Instance.

#### 4.2 IBM Digital Experience on Cloud 2-Envt Additional Capacity

IBM Digital Experience on Cloud 2-Envt Additional Capacity may be acquired to expand the compute capacity of the IBM Digital Experience on Cloud 2-Envt Instance SaaS by 2 virtual CPUs per Instance.

## Appendix B

IBM provides the following availability service level commitment (“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 to Client.

### 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 for IBM SaaS

Availability of the IBM Digital Experience on Cloud 1-Envt Instance IBM SaaS offering 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)
<99.50%	2%
<98.00%	5%
<94.50%	10%

Availability of the IBM Digital Experience on Cloud 2-Envt Instance IBM SaaS offering 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)
<99.93%	2%
<98.80%	5%
<95.00%	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: 45 minutes total Downtime during Contracted Month for the IBM Digital Experience on Cloud 2-Envt Instance IBM SaaS offering:

$\frac{43,200 \text{ total minutes in a 30-day Contracted Month} - 45 \text{ minutes Downtime} = 43,155 \text{ minutes of Availability}}{43,200 \text{ total minutes}}$	<p>= 99.90% Availability, = 2% Availability Credit for &lt;99.93% Availability during 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, Staging, or Development.
- Claims made by an IBM Client’s users, guests, participants and permitted invitees of the IBM SaaS.