



IBM Terms of Use – SaaS Specific Offering Terms

IBM Aspera Files

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 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 Aspera Files Personal Edition
- IBM Aspera Files Business Edition
- IBM Aspera Files Enterprise Edition
- IBM Aspera Files Personal Edition Base Plan
- IBM Aspera Files Business Edition Base Plan
- IBM Aspera Files Enterprise Edition Base Plan
- IBM Aspera Files Additional Storage
- IBM Aspera Files On-Premise Node
- IBM Aspera Files Egress

1.1 Associated IBM Programs

The IBM SaaS subscriptions do not include Subscription and Support for the Associated IBM Programs. Client represents that it has acquired the applicable license entitlements and Subscription and Support for the Associated IBM Programs. During the subscription period to the IBM SaaS, Client must remain current on Subscription and Support for the Associated IBM Programs.

2. Charge Metrics

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

- a. Gigabyte is a unit of measure by which the IBM SaaS can be obtained. A Gigabyte is defined as 2 to the 30th power bytes of data (1,073,741,824 bytes). Sufficient entitlements must be obtained to cover the total number of Gigabytes processed by the IBM SaaS during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document.
- b. Terabyte is a unit of measure by which the IBM SaaS can be obtained. A Terabyte is 2 to the 40th power bytes. Sufficient entitlements must be obtained to cover the total number of Terabytes processed by the IBM SaaS during the measurement period specified in Client's PoE or Transaction Document.
- c. Application Instance is a unit of measure by which the IBM SaaS can be obtained. An Application Instance entitlement is required for each instance of an Application connected to the IBM SaaS. If an Application has multiple components, each of which serves a distinct purpose and/or user base, and each of which can be connected to or managed by the IBM SaaS, each such component is considered a separate Application. Additionally, test, development, staging, and production environments for an Application are each considered to be separate instances of the Application and each must have an entitlement. Multiple Application instances in a single environment are each considered to be separate instances of the Application and each must have an entitlement. Sufficient Entitlements must be obtained to cover the number of Application Instances connected to the IBM SaaS during the measurement period specified in Client's 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

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

3.2 Overage Charges

If actual usage of the IBM SaaS during the measurement period exceeds the entitlement specified in the PoE, Client will be charged for the overage as specified in the Transaction Document.

3.3 Pay Per Use Charges

Pay per use offerings identified in the Transaction Document will not be invoiced until Client uses the pay per use service. When used, Client will be invoiced according to the rate specified in the Transaction Document.

4. Term and Renewal Options

The term of the IBM SaaS begins on the date IBM notifies Client of their access to the IBM SaaS, as documented in the PoE. The PoE will specify whether the IBM SaaS renews automatically, proceeds on a continuous use basis, or terminates at the end of the term.

For automatic renewal when the initial term is less than twelve months, unless Client provides written notice not to renew at least 30 days prior to the term expiration date, the IBM SaaS will automatically renew for the term specified in the PoE.

For continuous use when the initial term is twelve months or greater, the IBM SaaS will continue to be available on a month to month basis until Client provides 60 days written notice of termination. The IBM SaaS will remain available to the end of the calendar month after such 60 day period.

5. Technical Support

Technical support for the IBM SaaS is provided via telephone, 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 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 at <http://asperasoft.com/support/>.

Severity	Severity Definition	Response 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 1 hour
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
3	Minor business impact: Indicates the service or functionality is usable and it is not a critical impact on operations.	Within 4 business hours
4	Minimal business impact: An inquiry or non-technical request.	Within 1 business day

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 (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 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 Data Privacy

IBM and Client are each responsible for complying with their respective obligations under the applicable data protection laws governing the personal data (as defined in the applicable data protection laws) that is stored or processed by IBM for Client under this Agreement ("Client Data"). By executing this Agreement, Client appoints IBM as a data Processor of Client Data. Client remains solely responsible for determining the purposes and means of IBM's processing of Client Data under this Agreement, including that such processing in accordance with Client's instructions will not place IBM in breach of the applicable data protection laws. IBM and Client each acknowledge that it is not investigating the steps the other is taking to comply with applicable data protection laws. Nothing in this Agreement prevents IBM or Client from taking the steps it deems necessary to comply with applicable data protection laws. Client acknowledges it is solely responsible for determining that the security measures specified in this Agreement constitute appropriate technical and organizational measures to protect Client Data as required by the applicable data protection laws. IBM is not required to perform or adhere to any security measures concerning Client Data other than those specified in this Agreement and as a Processor of Client Data; IBM will process Client Data as specified in this Agreement, and as IBM reasonably considers necessary or appropriate to perform the services. Client is solely responsible for determining that any transfer by IBM or Client of Client Data across a country border under this Agreement complies with the applicable data protection laws.

6.3 Statement of Security Practices

IT system security involves protecting systems and information through prevention, detection, and response to improper access from within and outside your enterprise. Improper access can result in information being altered, destroyed, or misappropriated or can result in misuse of your systems to attack others. Without a comprehensive approach to security, no IT system or product should be considered completely secure and no single product or security measure can be completely effective in preventing improper access. IBM systems and products are designed to be part of a comprehensive security approach, which will necessarily involve additional operational procedures, and may require other systems, products, or services to be most effective. IBM does not warrant that systems and products are immune from the malicious or illegal conduct of any party.

6.4 Usage Metering

The IBM SaaS is sold under charge metrics that require IBM to monitor and report usage of the IBM SaaS via a metering service.

6.5 External User Access

Client may choose to give External Users access to the IBM SaaS. An External User is a unique person, not employed in, paid by, or acting on behalf of Client. A person who is employed in or paid by Client, but not accessing the IBM SaaS within the scope of that relationship may be an External User. Client is responsible for these External Users, including but not limited to a) any claims made by the External Users relating to the IBM SaaS, or b) any misuses of the IBM SaaS by these External Users.

6.6 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 Aspera Files

IBM Aspera Files enables secure exchange of files and folders of any size between users, even across separate organizations. Using Aspera Files, users can store and readily access files and folders in multiple cloud-based and on-premises storage systems. Sharing among users is enabled by browsing or dragging-and-dropping, regardless of where the files are located, freeing collaboration from traditional boundaries among colleagues in both local and remote locations. Aspera Files uses Aspera's FASP protocol, which overcomes the limitations of other file-transfer technologies. By moving large data sets - regardless of network conditions, physical distance between sites, and file size, type, or number - Aspera technology enables a new world of collaboration, sharing, and content delivery.

2. Offerings

2.1 IBM Aspera Files Personal Edition

The Personal Edition of the IBM SaaS is available as a subscription and on a pay per use basis. It includes:

- Aspera Files Web Application access
- Aspera Transfer Platform access
- 1 Workspace
- 1TB of cloud storage

2.2 IBM Aspera Files Business Edition

The Business Edition of the IBM SaaS is available as a subscription and on a pay per use basis. It includes:

- Aspera Files Web Application access
- Aspera Transfer Platform access
- 10 Workspaces
- 5TB of cloud storage

2.3 IBM Aspera Files Enterprise Edition

The Enterprise Edition of the IBM SaaS is available as a subscription and on a pay per use basis. It includes:

- Aspera Files Web Application access
- Aspera Transfer Platform access
- 100 Workspaces
- 10TB of cloud storage

2.4 Pay Per Use Plan

Client may use the IBM SaaS under a pay per use model without Client committing to a specific subscription term or a specific entitlement quantity. Client will be charged for actual usage of the IBM SaaS during each calendar month at the rate specified in the Transaction Document. The pay per use model does not incur overage charges.

2.5 Optional Services

2.5.1 IBM Aspera Files Additional Storage

This pay per use IBM SaaS offering enables Client to use additional cloud storage in excess of what is included in their subscription. Client will be charged for excess storage at the utilization rate as measured on the last calendar day of each month.

2.5.2 IBM Aspera Files On-Premise Node

This IBM SaaS enables Client to connect IBM Aspera Enterprise Servers, IBM Aspera Connect Servers and IBM Aspera Point-to-Point Clients to the Aspera Files Web Application. Client will be charged for each Application Instance connected.

2.5.3 IBM Aspera Files Egress

This pay per use IBM SaaS offering includes egress bandwidth and will be charged when:

- A subscription term of less than twelve months or pay per use consumption exceeds 10TB of egress per month, or
- A subscription term of twelve months or more exceeds 120TB of egress per year.

Aspera Files Egress bandwidth does not apply to Base Plans.

2.6 Base Plan

Base Plans do not include storage for the IBM SaaS or entitlements to certain required programs for Client's use. Client is required to obtain sufficient entitlements to IBM Aspera Enterprise Server, IBM Aspera Connect Server, IBM Aspera Point-to-Point Client, or IBM Aspera Platform on Demand ("Associated IBM Programs"), as well as sufficient storage to use any Base Plan IBM SaaS with the Associated IBM Programs.

2.6.1 IBM Aspera Files Personal Edition Base Plan

Personal Edition subscription includes:

- Aspera Files Web Application access
- 1 Workspace

2.6.2 IBM Aspera Files Business Edition Base Plan

Business Edition subscription includes:

- Aspera Files Web Application access
- 10 Workspaces

2.6.3 IBM Aspera Files Enterprise Edition Base Plan

Enterprise Edition subscription includes:

- Aspera Files Web Application access
- 100 Workspaces

2.7 Base Plan Optional Services

2.7.1 IBM Aspera Files On-Premise Node

This IBM SaaS enables Client to connect IBM Aspera Enterprise Servers, IBM Aspera Connect Servers and IBM Aspera Point-to-Point Clients to the Aspera Files Web Application. Client will be charged for each Application Instance connected.



Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS as specified in a PoE. The SLA is not a warranty. The SLA is available only to Client and applies only to use in production environments. This SLA will not apply due to the unavailability or inoperability of Aspera Files On-Premise Nodes or Aspera on Demand when used with the IBM SaaS

1. Availability Credits

Client must log a Severity 1 support ticket with the IBM Aspera technical support help desk (<http://asperasoft.com/support/> or support@aseprasoft.com) within 24 hours of first becoming aware of an event that has impacted the IBM SaaS availability. The ticket must include dates and times of loss of service, error messages received (if any), contact information, and full description of the interruption of service availability including logs, if applicable. Client must reasonably assist IBM with any problem diagnosis and resolution.

A support ticket claim for failure to meet an SLA must be submitted within seven business days of the end of the claimed outage after the technical issues have been resolved. Compensation for a valid SLA claim will be a credit against a future invoice for the IBM SaaS based on the duration of time during which production system processing for the IBM SaaS is not available (“Downtime”). Downtime is measured from the time Client reports the event until the time the IBM SaaS is restored and does not include time related to a scheduled or announced maintenance outage; causes beyond IBM’s control; problems with Client or third party content or technology, designs or instructions; unsupported system configurations and platforms or other Client errors; or Client-caused security incident or Client security testing. For each thirty (30) continuous minute period of Downtime, IBM will apply the highest applicable compensation based on the cumulative availability of the IBM SaaS during each contracted month, as shown in the table below. The total compensation with respect to any contracted month cannot exceed 10 percent of one twelfth (1/12th) of the annual charge for the IBM SaaS.

2. Service Levels

Availability of the IBM SaaS during a contracted month

Availability during a contracted month	Compensation (% of monthly subscription fee* for contracted month that is the subject of a claim)
<99%	2%
<97.5%	5%

* If the IBM SaaS was acquired from an IBM Business Partner, the monthly subscription fee will be calculated on the then-current list price for the IBM SaaS in effect for the contracted month which is the subject of a claim, discounted at a rate of 50%. IBM will make a rebate directly available to Client.

Availability, expressed as a percentage, is calculated as: the total number of minutes in a contracted month minus the total number of minutes of Downtime in a contracted month divided by the total number of minutes in the contracted month.

Example: 500 minutes total Downtime during contracted month

43,200 total minutes in a 30 day contracted month – 500 minutes Downtime = 42,700 minutes	= 2% Availability credit for 98.8% availability during the contracted month
<hr style="width: 50%; margin: 0 auto;"/> 43,200 total minutes	