



# IBM Terms of Use – SaaS Specific Offering Terms

## IBM Business Process Manager Hybrid Entitlement

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 Business Process Manager Hybrid Entitlement Authorized User
- IBM Business Process Manager Hybrid Entitlement Concurrent User
- IBM Business Process Manager Hybrid Entitlement Additional Author
- IBM Business Process Manager Hybrid Entitlement Test Environment
- IBM Business Process Manager Hybrid Entitlement Process Runtime Environment

### 2. Charge Metrics

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

- a. Authorized User is a unit of measure by which the IBM SaaS can be obtained. Client must obtain separate, dedicated entitlements for each unique Authorized User given access to the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the IBM SaaS during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document.
- b. Concurrent User is a unit of measure by which the IBM SaaS can be obtained. A Concurrent User is a person who is accessing the IBM SaaS at any particular point in time. Regardless of whether the person is simultaneously accessing the IBM SaaS multiple times, the person counts only as a single Concurrent User. Client must obtain entitlements for the maximum number of Concurrent Users simultaneously accessing the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means during the measurement period specified in Client's PoE or Transaction Document.
- c. 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 PoE or Transaction Document.

### 3. Charges and Billing

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

#### 3.1 Set-Up

Set-up charges will be specified in a Transaction Document. A one-time set-up fee will apply to the following at the rate and billing term specified in the Transaction Document:

- each IBM SaaS Instance ordered
- each additional Test Environment ordered
- each additional Process Runtime Environment ordered

#### 3.2 Partial Month Charges

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

### 3.3 Overage Charges

If Client's actual usage of the IBM SaaS during the measurement period exceeds the entitlement specified on the PoE, then Client will be invoiced for the overage as set forth 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, unless Client provides written notice not to renew at least 90 days prior to the term expiration date, the IBM SaaS will automatically renew for the term specified in the PoE.

For continuous use, the IBM SaaS will continue to be available on a month to month basis until Client provides 90 days written notice of termination. The IBM SaaS will remain available to the end of the calendar month after such 90 day 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 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 are 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 documentation for the IBM SaaS and the IBM Software 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 2 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

## 6. IBM SaaS Offering Additional Terms

### 6.1 Hybrid Entitlement Offerings

If the IBM SaaS offering is designated as "Hybrid Entitlement", Client will receive entitlement to use the IBM SaaS, the IBM Programs identified in the service description section of this ToU for use in the environment of Client's choice, and the right to use and have access to technical support and Program upgrades for the identified Programs. Client is able to use the identified Programs and access technical support and Program upgrades as long as Client continues to subscribe to the IBM SaaS.

Use of an IBM SaaS Hybrid Entitlement offering is subject to the following terms and restrictions:

- a. Client's use of the Program(s) are licensed under the terms of the International Program License Agreement and the corresponding License Information included with the Program(s).

- b. Client may use the Programs and the technical support and Program upgrades provided by a Hybrid Entitlement offering subject to the applicable terms of the IBM International Passport Advantage Agreement (Z125-5831-09) as follows:
  - (1) the first three paragraphs of *Section 3 – Programs and IBM Software Subscription and Support*, and
  - (2) paragraphs three and four of *Section 3.8 – IBM Software Subscription and Support (“S&S”)*.
- c. When Client’s subscription to the IBM SaaS ends, Client must remove all Programs provided by the Hybrid Entitlement offering from their systems and destroy all copies.
- d. Client’s use of a Hybrid Entitlement offering’s total acquired quantity of the IBM SaaS may be divided between use of the IBM SaaS and use of the Programs provided by the Hybrid Entitlement offering. Client’s use at any given time cannot exceed the total number of entitlements acquired as specified on Client’s PoE. Overages charges will apply as specified in the TD if Client’s use exceeds the entitlement stated on the PoE.

## **6.2 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.

## **6.3 Benchmarking**

Client may disclose the results of any benchmark test of the IBM SaaS or its subcomponents to any third party provided that Client (A) publicly discloses the complete methodology used in the benchmark test (for example, hardware and software setup, installation procedure and configuration files), (B) performs Client’s benchmark testing running the IBM SaaS in its Specified Operating Environment using the latest applicable updates, patches and fixes available for the IBM SaaS from IBM or third parties that provide IBM products (“Third Parties”), and (C) follows any and all performance tuning and “best practices” guidance available in the IBM SaaS’s documentation and on IBM’s support web sites for the IBM SaaS. If Client publishes the results of any benchmark tests for the IBM SaaS, then notwithstanding anything to the contrary in any agreement between Client and IBM or Third Parties, IBM and Third Parties will have the right to publish the results of benchmark tests with respect to Client’s products provided IBM or Third Parties complies with the requirements of (A), (B) and (C) above in its testing of Client’s products.

## **6.4 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.

## **6.5 Accelerators and Sample Materials**

The IBM SaaS may include some components in source code form (“Source Components”) and other materials identified as Sample Materials. Client may copy and modify Source Components and Sample Materials for internal use only, provided however that Client may not alter or delete any copyright information or notices contained in the Source Components or Sample Materials. IBM provides the Source Components and Sample Materials without obligation of support and “AS IS”, WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, NON-INFRINGEMENT OR NON-INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **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 BPM Hybrid Entitlement Overview and Capabilities

The Hybrid entitlement offering provides a business process management platform for visibility and management of business processes. The Program includes process design, execution, monitoring, and optimization capabilities. Clients are entitled to access the functionality either in an IBM managed cloud environment or download and install IBM Business Process Manager (IBM BPM) in the environment of Client's choice.

Client must purchase a quantity of either Authorized Users or Concurrent Users to get access to the following capabilities:

#### 1.1 Operating Environments

A single instance of the IBM SaaS includes a dedicated development, test, and process runtime environment with the following characteristics:

- Development environment – a virtual Process Center Advanced environment with at least one cluster member. Capacity for the development environment is based on the default quantity of designer tool authors plus any additional authors purchased for the IBM SaaS instance.
- Test environment – a virtual Process Server Advanced environment with one cluster member. Capacity for the test environment is based on the number of Authorized or Concurrent Users purchased for the IBM SaaS instance.
- Process runtime environment - a highly available virtual Process Server Advanced environment with at least two cluster members and a highly available database cluster. This provides a production ready environment. Capacity for the process runtime environment is based on the number of Authorized or Concurrent Users purchased for the IBM SaaS instance.

Environments when used in the Client's location of choice

- Development environment – entitled to a Process Center Advanced environment to support only the quantity of default designer tool authors plus any additional authors purchased.
- Test environment – entitled to a Process Server Advanced Non-production environment to support only the number of Authorized or Concurrent Users purchased.
- Process runtime environment – entitled to a highly available Process Server Advanced environment to support the number of Authorized or Concurrent Users purchased.

#### 1.2 Enabling Software

Enabling Software included with the IBM SaaS is:

- IBM Process Designer
- IBM Integration Designer

#### 1.3 Designer Tool Access

Client may access and download the Enabling Software IBM Process Designer and/or IBM Integration Designer to develop process applications. The Enabling Software runs on a Client desktop system and remotely connects to the IBM SaaS.

#### 1.4 Designer Tool User Restriction

The IBM SaaS allows up to five (5) IBM SaaS users to access and use the IBM Process Designer and/or IBM Integration Designer Enabling Software.

#### 1.5 Cloud Based Features

##### 1.5.1 Virtual Private Network (VPN)

The IBM SaaS includes an optional single software based VPN connection for secure and encrypted communication from the IBM SaaS to systems external to the IBM SaaS, including systems in the Client's network. Information about the VPN will be provided upon written request. This request should be sent to [SupportBPMonCloud@us.ibm.com](mailto:SupportBPMonCloud@us.ibm.com).

### **1.5.2 Account Administrator**

The IBM SaaS provides Client with an Account Administrator user login and password to access the Cloud operating environment. The Account Administrator will have the ability to manage an IBM SaaS User's access to the operating environment, and assign and delete IBM SaaS User roles. The Account Administrator may assign additional IBM SaaS users to have administrator privileges.

### **1.5.3 IBM SaaS Home Page**

The IBM SaaS home page allows IBM SaaS users to access the IBM SaaS operating environment capabilities that are defined for their role.

### **1.5.4 User Management Page**

A user management page enables Account Administrators to create and delete new users and assign roles. IBM SaaS users access the user management page to manage their personal user information. IBM SaaS users may be assigned to one or more roles that will enable access to specific role-defined IBM SaaS capabilities.

### **1.5.5 Email Notifications**

The IBM SaaS includes a notification function that notifies IBM SaaS users about their IBM SaaS access, role assignments, and password changes. The notification function also notifies administrators of IBM SaaS status and scheduled changes.

### **1.5.6 Daily Automatic Online Backup**

The IBM SaaS will execute a daily backup that is used for automated recovery of the IBM SaaS, as needed. The backup is encrypted and stored in a different data center location in the same global region.

### **1.5.7 Automated Monitoring and Recovery**

The IBM SaaS will monitor the availability of the service and execute a recovery if it becomes unresponsive or unreachable.

## **1.6 IBM SaaS Optional Features**

### **1.6.1 IBM Business Process Manager Hybrid Entitlement Additional Author**

The IBM SaaS provides a purchase option for additional IBM SaaS users to access the Development environment(s), the IBM Process Designer enabling software, and/or the IBM Integration Designer enabling software. The additional authors are permitted to only access the development environment(s) in the cloud or set up in the location of the Client's choosing.

### **1.6.2 IBM Business Process Manager Hybrid Entitlement Test Environment**

Entitlement to the Test Environment provides Client with an additional test environment in addition to the one included in the IBM SaaS. Test Environment users are only permitted to access this additional test environment, whether via the cloud or installed as a non-production environment set up in the location of Client's choosing.

### **1.6.3 IBM Business Process Manager Process Hybrid Entitlement Process Runtime Environment**

Entitlement to the Process Runtime Environment provides Client with an additional runtime environment from the one included in the IBM SaaS. The process runtime users purchased are only permitted to access the additional runtime environment, whether via the cloud or set up in the location of Client's choosing.



**Appendix B**

IBM provides the following availability service level agreement (“SLA”) for the cloud based portion of 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.

**1. Availability Credits**

Client must log a Severity 1 support ticket with the IBM technical support help desk within 24 hours of first becoming aware of an event that has impacted the IBM SaaS availability. 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 three business days after the end of the contracted month. 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. 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 one twelfth (1/12th) of the annual charge for the IBM SaaS.

For bundled IBM SaaS (individual IBM SaaS offerings packaged and sold together as a single offering for a single combined price), the compensation will be calculated based on the single combined monthly price for the bundled IBM SaaS, 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 at a given time.

**2. Service Levels**

Availability of the IBM SaaS during a contracted month is as follows:

Availability during a contracted month	Compensation (% of monthly subscription fee for contracted month that is the subject of a claim)
< 99.93%	5%
< 99.50%	10%
< 99.0%	50%
< 95.00%	75%
< 90.00%	100%

\* 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: 60 minutes total Downtime during contracted month

<p>43,200 total minutes in a 30 day contracted month -- 60 minutes Downtime = 43,140 minutes</p> <hr/> <p>43,200 total minutes</p>	<p>= 5% Availability credit for 99.86% availability during the contracted month</p>
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