

IBM LotusLive

The terms of this IBM Terms of Use are in addition to those of the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement as applicable (“Agreement”). Carefully read these IBM SaaS Terms of Use (“Terms of Use” or “TOU”) before using the IBM SaaS and any associated Enabling Software. Customer may use the IBM SaaS and Enabling Software only if Customer first accepts these Terms of Use. By accessing or using the IBM SaaS or Enabling Software or clicking on an “Accept” button, Customer agrees to these Terms of Use.

IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THESE TERMS OF USE. IF YOU DO NOT AGREE WITH THESE TERMS OF USE OR DO NOT HAVE FULL AUTHORITY TO BIND CUSTOMER TO THESE TERMS OF USE THEN DO NOT IN ANY MANNER USE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED AS PART OF THE IBM SAAS OR USE ANY ENABLING SOFTWARE.

Part 1 – General Terms

1. Purpose

These Terms of Use are for the following IBM SaaS offerings:

- IBM LotusLive Engage
- IBM LotusLive Engage for Enterprise Deployment
- IBM LotusLive Meetings
- IBM LotusLive Meetings for Enterprise Deployment
- IBM LotusLive iNotes
- IBM LotusLive Connections
- IBM LotusLive Notes
- IBM LotusLive Notes Client Download
- IBM LotusLive Notes Hosted Blackberry Service
- IBM LotusLive Notes Step-Up
- IBM LotusLive Notes Traveler Services
- IBM LotusLive for Active Lotus S&S Customers
- IBM LotusLive Plus

For the purpose of this ToU only, the term “IBM SaaS” refers to the specific IBM SaaS offering set forth in this Section 1.

Customer may use the IBM SaaS only during a valid Subscription Period.

2. Definitions

Capitalized terms not defined in these Terms of Use are defined in the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable.

Enabling Software – any Program and associated materials provided to Customer by IBM or a third party as part of the IBM SaaS offering in order to facilitate access to and use of IBM SaaS.

Privacy Practice – the Privacy Practice, located on the Internet at www.ibm.com/privacy, and any subsequent modification.

3. General Charge Terms

3.1 Metrics

Authorized User – is a unit of measure by which the IBM SaaS offering may be purchased. An Authorized User is a unique person who is given access to IBM SaaS. Customer must obtain separate, dedicated entitlements for each Authorized User accessing the IBM SaaS offering in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means.

An entitlement for an Authorized User is unique to that Authorized User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Authorized User entitlement to another person.

Host with up to X Participants – is a unit of measure by which the IBM SaaS offering may be purchased. The Host is a specific user with access rights to a personal account that allows them to hold an unlimited number of meetings with up to the number of participants specified in the Customer's Proof of Entitlement. Only one meeting per Host can be held at one time.

3.2 Charges & Billing

3.2.1 Billing Options including Metered Billing

The available billing options are annually or monthly for the Subscription Period. Subscription Periods may be obtained for one, two or three year duration. The amount payable and billing frequency for the IBM SaaS is specified in the Transaction Document. Charges for Enabling Software, if any, will be separate and are specified in the Transaction Document.

3.2.2 IBM SaaS Subscription Period

For the purpose of the LotusLive IBM SaaS, the IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month, unless otherwise specified in a Transaction Document as a specific date of the month.

4. Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM may provide the IBM SaaS User with an Account identification and password. Customer is responsible for ensuring that each IBM SaaS User manages and keeps their Account information current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

Customer 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 Customer's behalf.

5. Enabling Software

This IBM SaaS offering may include Enabling Software provided by IBM or a third party supplier. If Customer downloads or installs any Enabling Software, Customer agrees not to use such Enabling Software for any purpose other than to facilitate or enable Customer's access and use of the IBM SaaS. If Enabling Software is presented with a separate license agreement (for example, the IBM International License Agreement for Non-Warranted Programs ("ILAN") or other IBM or third party license agreement) at the time of installation or download, such separate agreement will govern its use. Customer agrees that Customer accepts such terms by accepting this ToU or downloading, installing, or using the Enabling Software.

Enabling Software included with the IBM SaaS is:

- LotusLive Notes Client Download for use with LotusLive Notes on an optional basis
- LotusLive Sametime Meetings Download
- Plug-ins for LotusLive Meetings

6. Suspension of IBM SaaS and Cancellation

6.1 Suspension

In the event of a breach of the Terms of Use, Agreement, or Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the offending IBM SaaS User's Content, at any time. IBM will notify Customer of any suspension or revocation action.

6.2 Termination

IBM may terminate Customer's access to IBM SaaS for cause if Customer does not comply with the terms of the Agreement or this ToU and such noncompliance is not remedied within a reasonable time after receiving written notice from IBM. If IBM terminates Customer's access to the Service for cause,

IBM is not obligated to issue a refund or credit for any unused portion of the IBM SaaS. IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice by letter or e-mail. Upon termination, Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within their possession or control.

7. Renewal of a Subscription Period

7.1 Customer Renewal Required

The IBM SaaS is not subject to autorenewal. Customer may renew a Subscription Period by placing an order either directly with IBM or through IBM reseller, as applicable.

8. Emergency Maintenance & Scheduled Maintenance

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur.

IBM SaaS will not be available during these times.

9. Updates; Applicable Terms and Authorization for Auto Updates

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates. Customer authorizes IBM to, and agrees that IBM may, in accordance with IBM's standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to IBM SaaS without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

10. Updates to Terms of Use

IBM reserves the right to modify these Terms of Use, only with respect to prospective use of IBM SaaS, at any time, by providing notice of such modified terms to Customer. Customer's continued use of IBM SaaS constitutes Customer's acceptance to be bound by any such modified Terms of Use.

11. Technical Support

Technical support for the IBM SaaS is included during the Subscription Period. Technical support options are detailed at www.lotuslive.com/support/

Items Not Covered by Technical Support

Technical support does not include assistance with:

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

12. Data Privacy and Data Security

In relation to all Personal Data provided by or through Customer to IBM, Customer will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. Customer agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content and using the Enabling Software and IBM SaaS. Customer confirms that Customer is solely responsible for any Personal Data that may be contained in Content, including any information which any IBM SaaS User shares with third parties on Customer's behalf. Customer is solely responsible for determining the purposes and means of processing Customer Personal Data by IBM under this Agreement, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws. Prior to processing, Customer will inform IBM about any special categories of data contained within Customer Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions. Customer is responsible for ensuring that the IBM SaaS meets such restrictions or special requirements. IBM agrees

to process any Personal Data that meets the requirements set forth in this Section according to these Terms of Use.

12.1 IBM's Obligations

IBM will only process Customer Personal Data in a manner that is reasonably necessary to provide SaaS and only for that purpose. IBM will only process Customer Personal Data in delivering IBM SaaS. IBM will use its reasonable endeavours to apply any security measures set forth in this TOU, and Customer has determined that any such measures provide an appropriate level of protection. On PPA or TOU termination or expiry, IBM will destroy or return to Customer all Customer Personal Data. If Customer or a Customer Data Controller is required by applicable data protection laws to provide information about or access to Customer Personal Data to an individual or to the relevant authority, IBM will reasonably cooperate with Customer in providing such information or access.

12.2 International Transfers

Customer agrees that when IBM reasonably determines it is useful in its provision of IBM SaaS, IBM may transfer Content, including Personal Data, across a country border to the entities and countries notified to Customer. Such transfer may be made to a country outside the European Economic Area, or to a country that has not been declared by the European Commission to provide an adequate level of data protection. Customer consents to the IBM SaaS being provided by these entities in these countries, and is solely responsible for determining that any transfer of Personal Data across a country border under the terms of the Agreement complies with applicable data protection laws. IBM shall reasonably cooperate with Customer, for Customer's own benefit or for the benefit of a Customer Data Controller, in its fulfillment of any legal requirement, including obtaining mandatory approvals.

13. Compliance with Applicable Export Law

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Customer acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS. Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

14. Indemnity

Customer agrees to indemnify, defend and hold IBM harmless against any third party claim arising out of or relating to: 1) violation of the Acceptable Use policy by Customer or any IBM SaaS User; or 2) Content created within IBM SaaS or provided, uploaded, or transferred to IBM SaaS by Customer or any IBM SaaS User.

15. Copyright Infringement

It is IBM's policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please visit the Digital Millennium Copyright Act Notices Page at <http://www.ibm.com/legal/us/en/dmca.html>.

16. Warranty and Exclusions

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE IBM SAAS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

Items Not Covered by Warranty

IBM does not warrant uninterrupted, secure, or error-free operation of IBM SaaS or that IBM will be able to prevent third party disruptions of IBM SaaS or that IBM will correct all defects.

Customer is responsible for the results obtained from the use of the IBM SaaS.

17. IBM SaaS Offering Unique Terms

17.1 Profiles

- a. In connection with Customer's use of the IBM SaaS, Customer acknowledges and agrees that: (i) IBM SaaS User names, titles, company names and photographs may be posted by an IBM SaaS User as part of a profile ("Profile") and that the Profile can be viewed by other IBM SaaS Users, and (ii) at any time Customer may request that an IBM SaaS User Profile be corrected or removed from the IBM SaaS and such Profile will be corrected or removed, but removal may prevent access to the IBM SaaS.

17.2 Third Party Services

The IBM SaaS may contain links to, or be used to access, interact with or share Content with third party websites or services ("Third Party Services"). If an IBM SaaS User transmits Content to a Third Party Service, Customer will ensure that IBM has all necessary permissions and consent to enable any such transmission of Content, but such interaction is solely between the IBM SaaS User and the third party website or service. IBM makes no warranties or representations about such Third Party Services, and shall have no liability for such Third Party Services. Access can be terminated by the relevant third parties at their sole discretion at any time. The IBM SaaS User may be required to enter into separate agreements with the third parties for access to or use of such Third Party Services. IBM is not a party to any such separate agreements and as an express condition of these Terms of Use, Customer will ensure that the IBM SaaS User complies with the terms of such separate agreements.

17.3 Additional Restrictions

In addition to the restrictions contained in the Agreement, Customer may not:

- a. Use the IBM SaaS on a "pass-through" basis to host collaboration among external guest users without Customer's active participation.
- b. Use the IBM SaaS on a timeshare or service bureau basis, or to operate a website or host an online business unless expressly permitted under another written agreement with IBM.
- c. Use the IBM SaaS to develop, offer or promote a service or product that is competitive with the IBM SaaS.

17.4 Restricted Use for LotusLive Enterprise Deployment and LotusLive for Lotus Customers with Active Support and Subscription

If Customer has obtained a Proof of Entitlement for IBM LotusLive Engage for Enterprise Deployment or IBM LotusLive Meetings for Enterprise Deployment, then each Authorized User may have up to 200 attendees on a LotusLive Web meeting. Only IBM SaaS Users within Customer's Enterprise for whom Customer has obtained an entitlement to use any LotusLive IBM SaaS offering covered by these Terms of Use, excluding LotusLive iNotes, may access or utilize the functions of LotusLive Engage for Enterprise Deployment or LotusLive Meetings for Enterprise Deployment. This restriction shall not affect guest users.

17.5 LotusLive Notes Entitlement Conditions

Customer's use of LotusLive Notes is conditioned upon having obtained one of the following entitlements:

- b. A Proof of Entitlement for IBM LotusLive Notes, which includes as Enabling Software one fixed term license of the IBM LotusLive Notes Client per Authorized User.
- or –
- c. A Proof of Entitlement for IBM LotusLive Notes Step Up, and
 - d. A separately obtained Proof of Entitlement and active Subscription and Support per Authorized User for one of the following programs: Domino Enterprise Client Access License or Domino Messaging Client Access License or Domino Messaging Express or Domino Collaboration Express.

17.6 Notice Regarding Recording Meetings

LOTUSLIVE MEETINGS AND LOTUSLIVE ENGAGE MAY ALLOW AN IBM SAAS USER TO RECORD MEETINGS. THE LAWS OF SOME JURISDICTIONS MAY REQUIRE THE CONSENT OF INDIVIDUALS PRIOR TO RECORDING THEIR COMMUNICATIONS. Customer will ensure that IBM SaaS Users obtain all necessary consents and make all necessary disclosures before recording meetings.

17.7 Notice Regarding Content Filtering

LotusLive Notes and LotusLive iNotes employs tools to monitor the IBM SaaS, investigate spam and virus attacks and apply proprietary as well as industry standard technology measures in order to block or filter Content that appear to be unsolicited and bulk, and/or malicious in nature. IBM reserves the right (but shall have no obligation) to block communications from other entities on the Internet. IBM reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content.

18. General

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.

19. Entire Agreement

The complete agreement between the parties, replacing any prior oral or written communications between Customer and IBM, consists of these Terms of Use and the Agreement. If there is a conflict among the terms of these Terms of Use and the Agreement, then these Terms of Use prevail over the Agreement.

Additional or different terms in any written communication from Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as set forth herein.

IBM SaaS Terms of Use

Part 2 – Country-unique Terms

The following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unmodified and in effect. This Part 2 is comprised of amendments to this Terms of Use and is organized as follows:

- Asia Pacific country amendments; and
- Europe, Middle East, and Africa country amendments.

ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA:

16. Warranty and Exclusions

The following is added to the end of Section 16:

Although IBM specifies that there are no warranties, Customer may have certain rights under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

NEW ZEALAND

16. Warranty and Exclusions

The following is added to the end of Section 16:

Although IBM specifies that there are no warranties, Customer may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Customer requires the goods for the purposes of a business as defined in that Act.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

EUROPEAN UNION MEMBER STATES

The following is added to Section 16: Warranty and Exclusions

In the European Union (“EU”), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 16: Warranty and Exclusions.

AUSTRIA

16. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following:

16. Warranties and Exclusions

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("Ausschluß der Gewährleistung").

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

GERMANY

16. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following;

16. Warranties and Exclusions

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("Ausschluß der Gewährleistung").

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

IRELAND

16. Warranty and Exclusions

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

IRELAND AND UNITED KINGDOM

19. Entire Agreement

The following sentence is added at the beginning of this Section 19:

Nothing in the following paragraphs shall have the effect of excluding or limiting liability for fraud.