

## IBM Work Optimization for Water Utilities on IBM SmartCloud

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 ordering, 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 IBM SaaS Terms of Use (“Terms of Use”) are for the following IBM SaaS:

- IBM Work Optimization for Water Utilities on IBM SmartCloud

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 Agreement.

**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](http://www.ibm.com/privacy), and any subsequent modification.

#### 3. General Charge Terms

##### 3.1 Metrics

###### 3.1.1 IBM Work Optimization for Water Utilities on IBM SmartCloud

Order Request is a unit of measure by which the IBM SaaS can be obtained. An Order Request is a unique order for products or services of Customer to carry out work that is processed, tracked, or managed by the IBM SaaS. Sufficient entitlements must be obtained to cover the number of Order Requests processed by the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.

##### 3.2 Charges & Billing

###### 3.2.1 Billing Options

The available billing options are annually, quarterly, or monthly for the Subscription Period. The amount payable and billing frequency for IBM SaaS is specified in the Transaction Document.

#### 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. Suspension of IBM SaaS and Termination**

### **5.1 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.

### **5.2 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. 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 your possession or control.

If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, IBM reserves the right to suspend the IBM SaaS provided to Customer, without liability to Customer, until such amounts are paid in full; provided, however, that no suspension will take effect unless IBM has given Customer at least 10 business days prior written notice that its account is overdue. Upon any suspension, discontinuance or cancellation of an IBM SaaS offering or termination of these Terms of Use, Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event Customer agrees to cease any further use of the IBM SaaS and destroy any copies of Enabling Software within Customer's possession or control.

## **6. Automatic Renewal of a Subscription Period**

The terms of the first two paragraphs of Section 3.5.4 of the Agreement: Annual Renewal of Software Subscription and Support and Selected Support, including any applicable Country-unique terms, apply to this IBM SaaS offering except that for purposes of these Terms of Use the words "software subscription and support" or "Selected Support" are replaced by the words "IBM SaaS Subscription Period".

## **7. 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.

## **8. 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 the 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.

## **9. 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.

## **10. Technical Support**

Technical support is provided for the IBM SaaS offering and Enabling Software, as applicable, during the Subscription Period. Technical support is included with the IBM SaaS and is not available as a separate offering. While Technical support is in effect:

- a. IBM provides Customer assistance for Customer's routine, short duration installation and usage (how-to) questions as well as code-related questions.
- b. IBM provides electronic problem reporting and assistance via telephone during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year.
- c. IBM may request that Customer allow IBM to remotely access Customer's system to assist Customer in isolating the problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

Technical support does not include assistance for 1) the design and development of applications, 2) Customer's use of the IBM SaaS in other than their specified operating environment or 3) failures caused by products and services for which IBM is not responsible under these Terms of Use.

## **11. Data Privacy and Data Security**

### **11.1 Customer's Obligations**

In relation to all Personal Data provided by or through Customer to IBM, Customer will be responsible as the sole data controller for complying with all applicable data protection or similar laws such as, but not limited to, EU Directive 95/46/EC (and laws implementing that Directive) that regulate the processing of Personal Data including special categories of data, as such terms are defined in that Directive (and laws implementing that Directive).

Customer agrees to obtain all legally required consents, authorizations and approvals and make all necessary disclosures before (i) including any Personal Data in Content and (ii) using the Enabling Software and IBM SaaS.

Customer confirms and acknowledges that it (i) 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; and (ii) has determined that the security measures set forth in these ToU provide an appropriate level of protection for any Personal Data.

Customer is solely responsible for determining the purposes and means of processing any Personal Data by IBM under these Terms of Use, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws.

### **11.2 IBM's Obligations**

IBM will only process Personal Data in a manner that is reasonably necessary to provide IBM SaaS, and only for that purpose.

IBM will only process Personal Data in delivering IBM SaaS as described by IBM, and Customer agrees that the description provided by IBM is consistent with Customer's processing instructions.

IBM will use reasonable endeavors to apply the security measures set forth in these ToU, and on termination or expiry of either this TOU or the Agreement, IBM will destroy or return to Customer all Personal Data.

If Customer or a Customer data controller is required by applicable data protection laws to provide information about or access to Personal Data to any individual or to a relevant authority, IBM will reasonably cooperate with Customer in providing such information or access.

### **11.3 International Transfers**

Customer agrees that when IBM reasonably determines it to be useful in its provision of IBM SaaS, IBM may transfer Content, including any 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 IBM SaaS being provided by such entities in such countries, and is solely responsible for determining that any transfer of any Personal Data across a country border under the terms of the Terms of Use 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.

## 11.4 Data Security

Security Measures. IBM will take commercially reasonable steps in accordance with its established practices, as revised from time to time, to implement:

- controls designed to limit unauthorized access to facilities at which Content is stored and processed;
- mechanisms designed to protect the integrity of equipment on which Content is stored and processed;
- security review activities designed to identify and remediate security vulnerabilities in systems, networks, operating systems and applications;
- network, web and email traffic controls designed to limit unauthenticated access and help defend against known and predicted vulnerabilities; and
- problem management and change management controls and logging of administrative task on devices.

## 12. 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.

## 13. 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.

## 14. 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>.

## 15. Warranty and Exclusions

### Limited Warranty

IBM warrants that IBM SaaS will conform to its specifications, as contained in Appendix A to this Terms of Use. Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

If an IBM SaaS offering does not function as warranted, and IBM is unable to make it do so, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect during the Subscription Period for the IBM SaaS offering.

### 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.

## 16. IBM SaaS Offering Unique Terms

If the Customer downloaded any code associated with this IBM SaaS, the Customer agrees to remove and delete said code at the end of the subscription period, if there is no intent to renew.

If Customer 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, Customer and the IBM User will provide IBM with the consent to

enable any such transmission of Content, but such interaction is solely between Customer 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.

**16.1 Compliance Management**

The IBM SaaS can be used to help Customer meet compliance obligations, which may be based on laws, regulations, standards or practices. Any directions, suggested usage, or guidance provided by the IBM SaaS does not constitute legal, accounting, or other professional advice, and Customer is cautioned to obtain its own legal or other expert counsel. Customer is solely responsible for ensuring that Customer and Customer's activities, applications and systems comply with all applicable laws, regulations, standards and practices. Use of this IBM SaaS does not guarantee compliance with any law, regulation, standard or practice.

**16.2 Return of Content**

Customer may request that IBM return Content within thirty (30) days of the effective date of termination of these Terms of Use. If so requested, IBM will create a file containing Content and make it available to Customer for download for a period of fifteen (15) days. After the 30-day period following termination or if Customer does not download Content within the 15-day period that IBM makes Content available for download, IBM has no obligation to maintain or provide any Customer Content and will thereafter, unless legally prohibited, delete all Customer Content in its systems or otherwise in its possession or under its control.

**16.3 Restrictions**

The IBM SaaS is to be used by individuals and entities only as permitted under these Terms of Use. Unless expressly permitted in another written agreement between Customer and IBM, Customer may not: remove, deface, cover, alter or obscure any copyright or trademark notices and/or legends or other proprietary notices associated with the IBM SaaS unless expressly permitted under another written agreement between Customer and IBM.

**17. 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.

**18. 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.

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In entering into this agreement, neither party is relying on any representation not specified in this agreement, including without limitation any representations concerning: i) performance or function of the IBM SaaS, ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.

Agreed to:  
**{Customer Legal Name}**

Agreed to:  
**<IBM Legal Entity>**

By \_\_\_\_\_

By \_\_\_\_\_

Customer Authorized signature

Authorized signature

Name (type or print):

Date:

Agreement number / Site number:

Customer number:

Customer address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name (type or print)

Date:

## 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:

##### 15. Warranty and Exclusions

*The following is added to the end of Section 15:*

The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### JAPAN

##### 15. Warranty and Exclusions

*The following is deleted from the first paragraph of Section 15:*

Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

#### NEW ZEALAND

##### 15. Warranty and Exclusions

*The following is added to this Section:*

The warranties specified in this Section are in addition to any rights Customer may have 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 15: 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 15: Warranty and Exclusions.

## **AUSTRIA**

### **15. Warranty and Exclusions**

*If you paid a charge for the IBM SaaS then the Section 15 Warranty and Exclusions is replaced in its entirety by the following:*

#### **15. Warranties and Exclusions**

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS Appendix A of this Terms of Use 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**

### **15. Warranty and Exclusions**

*If you paid a charge for the IBM SaaS then the Section 15 Warranty and Exclusions is replaced in its entirety by the following:*

#### **15. Warranties and Exclusions**

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS Appendix A of this Terms of Use 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**

### **15. 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**

### **18. Entire Agreement**

*The following sentence is added at the beginning of this Section 18:*

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



## Appendix A

### **IBM Work Optimization for Water Utilities on IBM SmartCloud**

A significant part of the operational expense of a utility is allocated to maintaining and upgrading the infrastructure, from responding to emergency situations to preventative maintenance and regular inspections. Given the geographically dispersed nature of the water infrastructure, each work item involves the dispatch of a crew from one or more central stations to the location of the work. In addition, in many cases, each work item is composed of a set of dependent sub-tasks in which each sub-task may require a specific skill (such as hydrant repair or valve inspection) and piece of equipment. Thus, the utility can significantly benefit from analytics that can assign work to maximize utilization of crews and equipment while minimizing "windshield time," that is, work-related time spent in a vehicle.

IBM Intelligent Water Work Optimization on IBM SmartCloud uses data from enterprise asset management (EAM) systems and geographical information systems (GIS) to run advanced optimization algorithms that:

- a. Allow the user to select work orders using an interactive GIS interface and assign work orders to one or more crews
- b. Can apply manual and semi-automatic selection modes that allow the user to select high-priority work orders that must be completed first. A fully automatic mode enables the user to have the tool optimize the work schedule.
- c. Optimize the sequence work orders such that driving time is minimized and the number of work orders that a crew can address in their shift is maximized.
- d. Assist the crew in determining the optimal driving route.

The capabilities of automated work scheduling can be used to help perform pro-active capacity planning by projecting the actual time and effort needed to complete a set of open work orders through multi-schedule, multi-crew planning exercises.

The Usage Analysis capability uses analytic models to allow the utility to better understand the usage of water in its network, its customer base, and to enable better strategic planning via more accurate forecasts of future revenue and demand. This component leverages data from the utility's water consumption database and GIS systems to run advanced analytics that allow the user to segment the utility's customers based on usage, seasonal water patterns, and peak usage patterns. This segmentation becomes the basis for other activities, such as:

- Demand forecasting
- Conservation efforts
- Rate pricing

The service level objectives for this IBM SaaS are:

99.5% availability outside of regularly scheduled maintenance windows

Maximum 5 second response time indicating web page activity is occurring

Service level objectives are a goal and do not constitute a warranty to Customer. There is no refund, credit, or other remedy available to Customer in the event IBM does not meet the service level objectives.