IBM Terms of Use – SaaS Specific Offering Terms for Federal

IBM SPSS Data Collection for Government on Cloud

The Terms of Use ("ToU") is composed of this IBM Terms of Use - SaaS Specific Offering Terms for Federal ("SaaS Specific Offering Terms") and a document entitled IBM Terms of Use - General Terms for Federal ("General Terms"). The General Terms for Federal are available at the following URL: www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms-usg/.

The complete agreement between the parties consists of terms and conditions equivalent to the IBM Passport Advantage Agreement (Appendix S) of the IBM GSA IT Schedule Contract, GS-35F-4984H, this SaaS Specific Offering Terms for Federal and the IBM Terms of Use – General Terms for Federal. References herein to Customer mean a U.S. Government entity. If you are not a U.S. Government entity, please contact your IBM contract representative to determine if you are eligible for this offering and under what terms.

Should a conflict arise between the General Terms and these SaaS Specific Offering Terms, these SaaS Specific Offering Terms will prevail over the General Terms.

Customer may use the IBM SaaS only if Customer first accepts the Terms of Use. By issuing a Purchase Order to IBM for the SaaS offering, that will incorporate these terms by reference, the Customer agrees to the terms and conditions set forth herein.

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

1. IBM SaaS

The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:

- IBM SPSS Data Collection Web Interviews for Government on Cloud
- IBM SPSS Data Collection Phone Interviews for Government on Cloud
- IBM SPSS Data Collection Survey Reporter for Government on Cloud
- IBM SPSS Data Collection Survey Tabulation for Government on Cloud
- IBM SPSS Data Collection Remote Administration for Government on Cloud
- IBM SPSS Data Collection Survey Reporter Publisher for Government on Cloud

2. Charge Metrics

The IBM SaaS offering is sold under the following charge metrics:

a. 500 Events is a unit of measure by which the IBM SaaS can be obtained. Event entitlements are based on the number of occurrences of a specific event related to the use of the IBM SaaS. Event entitlements are specific to the IBM SaaS and the type of event may not be exchanged, interchanged, or aggregated with other Event entitlements of another IBM SaaS or type of event. Sufficient entitlements must be obtained to cover every event that occurs during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

   The Events measured for entitlement purposes is a survey completion, that is, a survey routing through to its end page.

b. Authorized User is a unit of measure by which the IBM SaaS can be obtained. Customer 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 Customer’s Proof of Entitlement (PoE) or Transaction Document.

3. Charges and Billing

3.1 Billing Options

The amount payable for the IBM SaaS is specified in a Transaction Document. The billing options for the IBM SaaS subscription fee are as follows:
a. Per Month (in arrears)
b. Per Quarter (upfront)
c. Per Annum (upfront)
d. Entire Commitment (upfront)

The selected billing option will be valid for the length of the term specified in a PoE or a Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of the billing cycles in a year.

According to IBM’s customary commercial practices, certain offerings offer billing upfront. Should the Customer elect this billing option, IBM understands that the Customer has obtained appropriate authorization to do so in accordance with FAR Part 32.

3.2 Partial Month Charges

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by IBM that their access to the IBM SaaS is available.

3.3 Overage Charges

If Customer’s actual usage of the IBM SaaS exceeds the entitlement specified in a PoE or Transaction Document, Customer will be invoiced monthly for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document.

The Customer is responsible for monitoring the funding allocated on the current Purchase Order and issue a modification whenever the result of actual usage exceeds the allocated funding. Notwithstanding the requirement for a modification to increase funding, the Customer remains responsible for paying invoices for monthly provisioning and usage.

4. Renewal of a Subscription Period

4.1 Customer Renewal Required

Should the Customer wish to renew the IBM SaaS for a subsequent subscription period, a funded Purchase Order must be issued to IBM by the end of the current Subscription period to avoid termination of service. Please contact an IBM sales representative to obtain a new IBM SaaS subscription quote.

5. Technical Support

During the Subscription Period, technical support is provided for the IBM SaaS as set forth at https://support.coremetrics.com/FileManagement/Download/dbce75d712f44e2f9fa90fe1f2681797b or a subsequent URL provided by IBM. Technical support is included with the IBM SaaS and is not available as a separate offering.

6. IBM SaaS Offering Additional Terms

6.1 IBM SaaS User Profile Information

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 may 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.

6.2 Links to Third Party Websites or Other Services

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 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 warrantees or representations about such third party sites or services, and shall have no liability for such third party sites or services.

6.3 Sample Materials

IBM SaaS may include some components or other materials identified as Sample Materials. Customer may copy and modify Sample Materials for internal use only provided such use is within the limits of the license rights under this Agreement, provided however that Customer may not alter or delete any copyright information or notices contained in the Sample Materials. IBM provides the 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.

6.4 Prohibited Uses
The following uses are prohibited by Microsoft:

“No High Risk Use:” Customer may not use the IBM SaaS in any application or situation where the IBM
SaaS failure could lead to death or serious bodily injury of any person, or to severe physical or
environmental damage (“High Risk Use”). Examples of High Risk Use include, but are not limited to:
aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems,
implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include
utilization of IBM SaaS for administrative purposes, to store configuration data, engineering and/or
configuration tools, or other non-control applications, the failure of which would not result in death,
personal injury, or severe physical or environmental damage. These noncontrolling applications may
communicate with the applications that perform the control, but must not be directly or indirectly
responsible for the control function.

6.5 Privacy
SaaS Users are provided standardized usernames which they may then optionally change to a custom
username using their own personally identifiable information. In such event, Customer agrees that IBM
may use cookies and tracking technologies that will collect such personally identifiable information in
gathering usage statistics and information designed to help improve user experience and/or to tailor
interactions with users in accordance with http://www-01.ibm.com/software/info/product-
privacy/index.html.

6.6 Customer Discontinuance of Service
Customer must provide IBM with thirty (30) days written notice requesting cancellation of their IBM SaaS.
Upon cancellation of the Customer’s access to the IBM SaaS, Customer will be billed for any outstanding
access charges through the month in which the cancellation took effect. In the event the Customer
selected a billing option to pay upfront for the subscription, the Customer may obtain a prorated refund.
1. **IBM SPSS Data Collection Web Interviews for Government on Cloud**
   IBM SPSS Data Collection Web Interviews is designed to allow the IBM SaaS User to create and manage the online web Surveys by providing a set of tools for conducting web surveys. Data can be collected and reviewed as interviewing is taking place.

2. **IBM SPSS Data Collection Phone Interviews for Government on Cloud**
   IBM SPSS Data Collection Phone Interviews is designed to increase the productivity of actual or virtual call centers and allow the IBM SaaS User to create and manage the phone Surveys. Interviewing can be monitored as it is happening. Surveys can be completed via the web when necessary.

3. **IBM SPSS Data Collection Survey Reporter for Government on Cloud**
   IBM SPSS Data Collection Survey Reporter is designed to allow the IBM SaaS User to use interactive reporting and analysis to determine key insights from survey data collected.

4. **IBM SPSS Data Collection Survey Tabulation for Government on Cloud**
   IBM SPSS Data Collection Survey Tabulation is a browser-based survey and market research analysis tool that allows the IBM SaaS User to create tables and analyze data collected.

5. **IBM SPSS Data Collection Remote Administration for Government on Cloud**
   IBM SPSS Data Collection Remote Administration is designed to allow the IBM SaaS User to manage offline interviewers and projects and track data synchronization. Role-based access is used to ensure interviewers get the right projects and the IBM SaaS User gets the most current data.

6. **IBM SPSS Data Collection Survey Reporter Publisher for Government on Cloud**
   IBM SPSS Data Collection Survey Reporter Publisher is designed to allow the IBM SaaS User to publish interactive reports and share them with other IBM SaaS Users who need to view the results in an online environment. The IBM SaaS User can use role-based access to ensure that key reports and data files are protected.
This Service Level Agreement (SLA) is for the following IBM SaaS and is applicable if specified in Customer’s Proof of Entitlement (POE) or Transaction Document:

- IBM Data Collection for Government on Cloud

IBM provides this SLA to its Customers subject to the following terms. The version of this SLA that is current at the commencement or renewal of the term of your subscription will apply. You understand that this SLA does not constitute a warranty to you.

1. Definitions

   a. “Authorized Contact” means the individual you have specified to IBM who is authorized to submit Claims under this SLA.

   b. "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 Service.

   c. “Claim” means a claim submitted by your Authorized Contact to IBM pursuant to this SLA that a Service Level has not been met during a Contracted Month.

   d. "Contracted Month" means each full month during the term of the Service 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.

   e. “Customer” means an entity subscribing for the Service directly from IBM, which has entitlement for at least 500 events for Web Interviews or at least 1 user for Phone Interviews, Remote Administration, Survey Reporter, Survey Tabulation, or Survey Reporter Publisher at the time of submitting a Claim, and which is not in default of any material obligations, including payment obligations, under its contract with IBM for the Service.

   f. “Downtime” means a period of time during which production system processing for the Service has stopped and all of your users are unable to use all aspects of the Service for which they have appropriate permissions. By way of clarification, there is no “Downtime” if any user can use any aspect of the Service for which they have appropriate permissions. Downtime does not include the period of time when the Service is not available as a result of:

   - Planned System Downtime.
   - Force Majeure.
   - Problems with Customer or third party applications, equipment or data.
   - Customer or third party acts or omissions (including anyone gaining access to the Service by means of your passwords or equipment).
   - Failure to adhere to required system configurations and supported platforms for accessing the Service.
   - IBM’s compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer’s behalf.

   g. “Event” means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.

   h. “Force Majeure” means acts of God, terrorism, labor action, fire, flood, earthquake, riot, war, governmental acts, orders or restrictions, viruses, denial of service attacks and other malicious conduct, utility and network connectivity failures, or any other cause of Service unavailability that was outside IBM’s reasonable control.

   i. “Planned System Downtime” means a scheduled outage of the Service for the purpose of service maintenance.

   j. “Service” means the IBM SaaS offerings to which this SLA applies, named on the first page of this TOU. This SLA applies to all Services, either individually or in combination.
k. “Service Level” means the standard set forth below by which IBM measures the level of service it provides in this SLA.

2. Availability Credits

In order to be eligible to submit a Claim you must have logged a support ticket for each Event with the IBM customer support help desk for the applicable Service, in accordance with IBM procedure for reporting Severity 1 support issues. You must provide all necessary detailed information about the Event, including the time you were first impacted by the Event, and reasonably assist IBM with the diagnosis and resolution of the Event to the extent required for Severity 1 support tickets. Such ticket must be logged within twenty-four (24) hours of your first becoming aware that the Event has impacted your use of the Service.

Your Authorized Contact must submit your Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month which is the subject of the Claim.

Your Authorized Contact must provide to IBM all reasonable details regarding the Claim, including but not limited to, detailed descriptions of all relevant Events and the Service Level claimed not to have been met.

IBM will measure internally total combined Downtime during each Contracted Month. Availability Credits will be based on the duration of the Downtime measured from the time you report that you were first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit corresponding to the total combined availability during each Contracted Month, based on the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.

For Bundled Services (individual Services 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 Service. You may only submit Claims relating to one individual Service in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one Service in a bundle in any Contracted Month.

The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed 10 percent (10%) of one twelfth (1/12\textsuperscript{th}) of the annual charge paid by you to IBM for the Service.

IBM will use its reasonable judgment to validate Claims based on information available in IBM’s records, which will prevail in the event of a conflict with data in your records.

THE AVAILABILITY CREDITS PROVIDED TO YOU IN ACCORDANCE WITH THIS SLA ARE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM.

3. Service Levels

<table>
<thead>
<tr>
<th>Achieved Service Level during a Contracted Month</th>
<th>Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.0%</td>
<td>2%</td>
</tr>
<tr>
<td>&lt; 97.0%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 95.0%</td>
<td>10%</td>
</tr>
</tbody>
</table>

“Availability Percentage” is calculated as: (a) the total number of minutes in a Contracted Month minus the minutes of Planned System Downtime), minus (b) the total number of minutes of non-scheduled Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), with the resulting fraction expressed as a percentage.

Example: 500 minutes total non-scheduled Downtime during Contracted Month
4. **Exclusions**

This SLA is made available only to IBM Customers. This SLA does not apply to the following:

- Beta and trial Services.
- Non-production environments, including but not limited to test, disaster recovery, Q&A, or development.
- Claims made by an IBM Customer’s users, guests, participants of the Service.

If you have breached any material obligations under the Terms of Use, Acceptable Use Policy or your contract for the Service, including without limitation, breach of any payment obligations.