IBM Business Process Manager on Cloud for US Federal

The Terms of Use (“ToU”) is composed of this IBM Terms of Use - SaaS Specific Offering Terms (“SaaS Specific Offering Terms”) and the IBM Terms of Use - General Terms For Federal (“General Terms”). The SaaS Terms of Use are also available at the following URL: http://www-03.ibm.com/software/sla/sladb.nsf/sla/usg:  Clients placing a GSA Order with IBM, the complete agreement between the parties consist of terms and conditions as set forth in the current IBM GSA IT Schedule Contract, GS-35F-4984H, including the IBM Passport Advantage Agreement (Appendix S), the SaaS Specific Offering Terms for Federal and the IBM Terms of Use – General Terms for Federal (Chapter 9).  Should a conflict arise among Appendix S, the General Terms and these SaaS Specific Offering Terms, the conflict shall be resolved in the following order of precedence: these SaaS Specific Offering Terms, the General Terms and the Appendix S.

Clients placing a non-GSA Order (Open Market) - except for those provisions solely specific to GSA Orders, terms and conditions equivalent to those of the current IBM GSA IT Schedule Contract shall apply.  The complete agreement between the parties consist of terms and conditions equivalent to those set forth in the current IBM GSA IT Schedule Contract, GS-35F-4984H, including the IBM Passport Advantage Agreement (Appendix S), the SaaS Specific Offering Terms for Federal and the IBM Terms of Use – General Terms for Federal (Chapter 9).  Should a conflict arise among Appendix S, the General Terms and these SaaS Specific Offering Terms, the conflict shall be resolved in the following order of precedence: these SaaS Specific Offering Terms, the General Terms and the Appendix S.  The incorporation by reference of equivalent IBM GSA IT Schedule Contract terms and conditions shall not be considered a transaction under the Schedule Contract.

Client may use the IBM SaaS only if Client first accepts the Terms of Use.  By issuing a Purchase Order or other ordering document to IBM for the SaaS offering, Client agrees to the terms and conditions set forth herein.

1. IBM SaaS

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

- IBM Business Process Manager on Cloud for US Federal Authorized User
- IBM Business Process Manager on Cloud for US Federal Concurrent User
- IBM Business Process Manager on Cloud for US Federal Additional Author
- IBM Business Process Manager on Cloud for US Federal Additional Memory
- IBM Business Process Manager on Cloud for US Federal Additional Storage

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 Proof of Entitlement (PoE) or Transaction Document.

c. 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.
3. Charges and Billing
The amount payable for the IBM SaaS is specified in a Transaction Document, IBM proposal or IBM quote.

3.1 Set-Up
Set-up charges will be specified in a Transaction Document.

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

4. IBM SaaS Subscription Period Renewal Options
Client’s PoE will set forth whether the IBM SaaS will renew at the end of the Subscription Period, by designating one of the following:

4.1 Renewal Required
The IBM SaaS will terminate at the end of the Subscription Period and Client's access to the IBM SaaS will be removed. To continue to use the IBM SaaS beyond the end date, Client will need to place an order with Client’s IBM sales representative or IBM Business Partner to purchase a new Subscription 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 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 in the IBM Software as a Service Support Handbook.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Severity Definition</th>
<th>Response Time Objectives</th>
<th>Response Time Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>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.</td>
<td>Within 2 hour</td>
<td>24x7</td>
</tr>
<tr>
<td>2</td>
<td>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.</td>
<td>Within 2 business hours</td>
<td>M-F business hours</td>
</tr>
<tr>
<td>3</td>
<td>Minor business impact: Indicates the service or functionality is usable and it is not a critical impact on operations.</td>
<td>Within 4 business hours</td>
<td>M-F business hours</td>
</tr>
<tr>
<td>4</td>
<td>Minimal business impact: An inquiry or non-technical request.</td>
<td>Within 1 business day</td>
<td>M-F business hours</td>
</tr>
</tbody>
</table>

6. IBM SaaS Offering Additional Terms

6.1 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.
6.2 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.

6.3 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.

6.4 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.

6.5 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.
1. **IBM SaaS Overview and Capabilities**

The IBM SaaS provides a business process management platform for visibility and management of business processes. The IBM SaaS includes process design, execution, monitoring, and optimization capabilities.

Client must purchase a quantity of Authorized or Concurrent Users to get access to the following IBM SaaS Capabilities:

1.1 **Operating Environment**

The IBM SaaS includes a dedicated process runtime operating environment, a test operating environment, and a development operating environment.

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 **Virtual Private Network (VPN)**

The IBM SaaS includes an optional single software based VPN connection for secure and encrypted access to the operating environment. Client may select to utilize this VPN connection for the purpose of securely connecting to the IBM SaaS or for a process application executing in the IBM SaaS operating environment to communicate with systems within the Client’s network. Information about the VPN will be provided upon written request by Client. This request should be sent to SupportBPMonCloud@us.ibm.com.

1.6 **Account Administrator**

The IBM SaaS provides Client with an Account Administrator user login and password to access the 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.

1.7 **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.

1.8 **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.

1.9 **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.
1.10 Daily Automatic Online Backup
The IBM SaaS will execute a daily backup that is used for automated recovery of the IBM SaaS, as needed.

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

1.12 US Federal Hosting and Data Requirements
The IBM SaaS, including any data associated with the IBM SaaS, will be hosted in one of two IBM SoftLayer data centers that is designed for US federal workloads.

2. IBM SaaS Optional Features

2.1 Additional Author
The IBM SaaS provides a purchase option for additional IBM SaaS Users to access and use the IBM Process Designer and/or IBM Integration Designer Enabling Software.

2.2 Additional Storage
The IBM SaaS provides a purchase option for additional storage for the BPM internal database and embedded document store.

2.3 Additional Memory
The IBM SaaS provides a purchase option for additional memory for cases when the memory requirements of the process solution go beyond the computing capacity provided for the quantity of users purchased.
Appendix B

IBM provides the following availability service level agreement ("SLA") for the IBM SaaS and is applicable if specified in Client’s Proof of Entitlement (PoE) or Transaction Document:

The version of this SLA that is current at the commencement or renewal of the term of Client’s subscription will apply. Client understands that the SLA does not constitute a warranty.

1. Definitions

a. "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 IBM SaaS.

b. "Claim" means a claim Client submits to IBM that an SLA has not been met during a Contracted Month.

c. "Contracted Month" means each full month during the term of the IBM SaaS 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.

d. “Downtime” means a period of time during which production system processing for the IBM SaaS has stopped and Client’s users are unable to use all aspects of the IBM SaaS for which they have permissions. Downtime does not include the period of time when the IBM SaaS is not available because of:

   ● A scheduled or announced maintenance outage;
   ● Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, etc.);
   ● Problems with Client’s or a third party’s applications, equipment, or data;
   ● Client’s failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS; or
   ● IBM’s compliance with any designs, specifications, or instructions provided to IBM by Client or a third party on Client’s behalf.

e. “Event” means a circumstance or set of circumstances taken together, resulting in a failure to meet an SLA.

2. Availability Credits

a. To submit a Claim, Client must log a Severity 1 support ticket for each Event with the IBM technical support help desk, within 24 hours of Client first becoming aware that the Event has impacted Client’s use of the IBM SaaS. Client must provide all necessary information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event.

b. Client must submit the Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month in which the Claim arose.

c. Availability Credits are based on the duration of the Downtime measured from the time Client reports that Client was first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved SLA during each Contracted Month, as shown in the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.

d. For Bundled Service (individual IBM SaaS 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 IBM SaaS. Client may only submit Claims relating to one individual IBM SaaS in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one IBM SaaS in a bundle in any Contracted Month.
e. If Client purchased the IBM SaaS from a valid IBM reseller in a remarketing transaction in which IBM maintains primary responsibility for fulfilling the IBM SaaS and SLA commitments, the Availability Credit will be based on the then-current Relationship Suggested Value Price (RSVP) for the IBM SaaS in effect for the Contracted Month which is the subject of a Claim, discounted at a rate of 50%.

f. The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed one twelfth (1/12th) of the annual charge paid by Client to IBM for the IBM SaaS.

3. Service Levels
Availability of the IBM SaaS during a Contracted Month is as follows:

<table>
<thead>
<tr>
<th>Availability 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; 99.93%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99.50%</td>
<td>10%</td>
</tr>
<tr>
<td>&lt; 99.0%</td>
<td>50%</td>
</tr>
<tr>
<td>&lt; 95.00%</td>
<td>75%</td>
</tr>
<tr>
<td>&lt; 90.00%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Availability, expressed as a percentage, is calculated as: (a) the total number of minutes in a Contracted Month, minus (b) the total number of minutes of Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month.

Example: 60 minutes total Downtime during Contracted Month

\[
\frac{43,200 \text{ total minutes in a 30 day Contracted Month} - 60 \text{ minutes Downtime}}{43,200 \text{ total minutes in a 30 day Contracted Month}} = 5\% \text{ Availability Credit for 99.86% Achieved Service Level during the Contracted Month}
\]

4. Exclusions
This SLA is made available only to IBM Clients. This SLA does not apply to the following:

- Beta and trial services.
- Non-production environments, including but not limited to, test, disaster recovery, quality assurance, or development.
- Claims made by Client’s users, guests, participants and permitted invitees of the IBM SaaS.