IBM Terms of Use – SaaS Specific Offering Terms for Federal

IBM Workload Automation 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. Customers 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.

Customers 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.

Customer may use the IBM SaaS only if Customer first accepts the Terms of Use. By issuing a Purchase Order or other ordering document to IBM for the SaaS offering, Customer 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 Workload Automation on Cloud for US Federal

2. **Charge Metrics**
   The IBM SaaS is sold under the following charge metric as specified in the Transaction Document:
   a. Job is a unit of measure by which the IBM SaaS can be obtained. A Job is an object within the IBM SaaS that cannot be further divided and represents a computing process including all its sub-processes. Sufficient entitlements must be obtained to cover the total number of Jobs which are processed or managed by the IBM SaaS during the measurement period specified in Customer'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 **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.
   3.2 **Overage Charges**
      If Customer's actual usage of the IBM SaaS during the measurement period exceeds the entitlement specified in a PoE or Transaction Document, Customer will be invoiced for the overage at a rate specified in the Transaction Document.
      Customer is responsible for monitoring the funding allocated on their current order and issue a modification whenever the result of increases and/or decreases in charges exceed 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. **IBM SaaS Subscription Period Renewal**

The IBM SaaS will terminate at the end of the Subscription Period and Customer’s access to the IBM SaaS will be removed. To continue to use the IBM SaaS beyond the end date, Customer will need to place an order with Customer’s IBM sales representative or IBM Business Partner to purchase a new Subscription Period.

5. **Technical Support**

Technical support for the IBM SaaS is available during the Subscription Period.

**Email Support and SaaS Support Portal Hours of Operation are as follows:**

8:00 a.m. – 8:00 p.m. Eastern Standard Time zone, U.S., Monday – Friday (excluding holidays)
Support Hotline: 1-855-221-1166 in the U.S.
Email: support@ibmserviceengage.com

**After Hours and System Down Support:**

After Hours and System Down Support is available only for Severity 1 issues on business days, weekends, and holidays.

<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 1 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 you are 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 **Safe Harbor Compliance**

IBM abides by the U.S. - EU Safe Harbor Framework as set forth by the United States Department of Commerce regarding the collection, use and retention of information collected from the European Union. For more information about Safe Harbor or to access IBM’s certification statement, go to [http://www.export.gov/safeharbor/](http://www.export.gov/safeharbor/).

6.2 **Cookies**

Customer is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect personal information from Customer (your 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 Customer. Customer 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 Customer’s employees and contractors to access, update, correct or delete their collected personal information.

6.3 **Derived Benefit Locations**

Where applicable, taxes are based upon the location(s) Customer 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 Customer provides additional information to IBM. Customer is responsible for keeping such information current and providing any changes to IBM.
6.4 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 SaaS 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 warranties or representations about such third party sites or services, and shall have no liability for such third party sites or services.
Appendix A

With IBM Workload Automation on Cloud for US Federal, customers model the business processes one time to a level of detail that allows defining workflows with automation to allow running them in an unattended manner, then run these workflows every time they are needed. The reduced need for human intervention allows efficient execution and high-level governance over large quantities of executed processes.

Individual process execution elements are called jobs. They describe an activity performed on a system or an application. IBM Workload Automation on Cloud for US Federal is able to:

a. combine jobs into flows and attach conditions in any point of the flow,
b. automate the execution of jobs at the specified moment, and
c. present jobs and flows in summarized views where they can be monitored and manipulated.
IBM Terms of Use – Service Level Commitment

Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM Workload Automation on Cloud for US Federal offering and is applicable if specified in Customer’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 Customer’s subscription will apply. Customer understands that the SLA does not constitute a warranty to you.

1. Definitions

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

“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.

“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.

“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.

“Customer” – means an entity subscribing for the Service directly from IBM, which has entitlement for use of the Service 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.

“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, integrations, 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 Client or a third party on Customer's behalf.

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

“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.

“Planned System Downtime” – means a scheduled outage of the Service for the purpose of service maintenance or system updates, such as but not limited to, when a release, patch or hot fix is applied.

“Service Level” – means the standard set forth below by which IBM measures the level of service it provides in this SLA.

“Service” – means the IBM Workload Automation (SaaS) production instance to which this SLA applies, as shown on the first page of this Service Description. This SLA applies to each Service individually and not in combination.
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 Services, and not the monthly subscription fee for each individual Services. You may only submit Claims related 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 (1/12th) 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

Availability of Service during a Contracted Month

<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>Less than 99.8%</td>
<td>2%</td>
</tr>
<tr>
<td>Less than 98.8%</td>
<td>5%</td>
</tr>
<tr>
<td>Less than 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 (b) the total number of minutes of Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month, with the resulting fraction expressed as a percentage.

Example: 432 minutes total Downtime during Contracted Month

\[
\frac{43,200 \text{ total minutes in a 30 day Contracted Month} - 432 \text{ minutes Downtime}}{43,200 \text{ total minutes in a 30 day Contracted Month}} = 2\% \text{ Availability Credit for 99.0\% availability during the Contracted Month}
\]

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 instances, including but not limited to test, disaster recovery, training, Q&A, or development.
- Claims made by an IBM Customer's users, guests, and participants of the Service.
- Services, programs, enabling software or agents running on client systems or third party-provided systems
- 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.