IBM Terms of Use – SaaS Specific Offering Terms

IBM Bluemix Local

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

In the event of a conflict, the SaaS Specific Offering Terms prevail over the General Terms. By ordering, accessing or using the IBM SaaS, Client agrees to the ToU.

The ToU is governed by the IBM International Passport Advantage Agreement, the IBM International Passport Advantage Express Agreement, or the IBM International Agreement for Selected IBM SaaS Offerings, as applicable (“Agreement”) and together with the ToU make the complete agreement.

1. IBM SaaS

   The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:
   ● IBM Bluemix Local 64GB Compute Capacity
   ● IBM Bluemix Local Compute 16GB Capacity
   ● IBM Bluemix Data & Session Cache 50 GB Capacity
   ● IBM Bluemix Local Access One-Time Set Up
   ● IBM Bluemix Local API Management 500 API Calls Capacity

2. Backup and Restore

   Backup and restore policies are available on the Bluemix Local platform. Administrative procedures are located at http://www.ng.bluemix.net/docs/overview/restorelocal.html, which may be updated by IBM from time to time.

3. Security Description

   This IBM SaaS follows IBM’s data security and privacy principles for IBM SaaS which are available at https://www.ibm.com/cloud/resourcecenter/content/80 and any additional terms provided in this section. Any change to IBM’s data security and privacy principals will not degrade the security of the IBM SaaS.

   The IBM SaaS does not have any regulatory compliance certifications at this time.

4. Charge Metrics

   The IBM SaaS is sold under the following charge metric as specified in the Transaction Document:
   ● Instance is a unit of measure by which the IBM SaaS can be obtained. An Instance is access to a specific configuration of the IBM SaaS. Sufficient entitlements must be obtained for each Instance of the IBM SaaS made available to access and use during the measurement period specified in Client’s Proof of Entitlement (PoE) or Transaction Document.

5. Charges and Billing

   The amount payable for the IBM SaaS is specified in a Transaction Document.

5.1 Partial Month Charges

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

6. 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:

6.1 Automatic Renewal

   If Client’s PoE states that Client’s renewal is automatic, Client may terminate the expiring IBM SaaS Subscription Period by written request to Client’s IBM sales representative or IBM Business Partner, at least ninety (90) days prior to the expiration date as set forth in the PoE. If IBM or its IBM Business Partner does not receive such termination notice by the expiration date, the expiring Subscription Period will be automatically renewed for either one year or the same duration as the original Subscription Period as set forth in the PoE.
6.2 **Renewal Required**

When the PoE states that Client’s renewal type is “terminate”, 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.

7. **Technical Support**

Technical Support for services executed in the private environment is included for no additional charge with this Bluemix Local offering. A description of the support offering is found in the IBM Bluemix Terms of Use in the section for Standard Support. The description of how charges are calculated for Standard Support does not apply to this Bluemix Local offering.

8. **IBM SaaS Offering Additional Terms**

8.1 **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.

8.2 **Data Collection**

In the Bluemix Local environment, IBM may collect data about system state including logins by Client users (developers/operators) who deploy and operate Client applications on Bluemix, IP addresses of components, machines on which applications are deployed, health of components, capacity of the environment, communication between components, changes to components and the environment, usage/metering of resources and services, component logs, etc. IBM will not collect or access data stored by applications, services, or end users who access the applications developed and deployed by Client or other personally identifiable end Client information. All data is used solely for the purpose of supporting the specific environment, which includes assuring the security, availability, performance, capacity and health of that environment. This data will not be used or shared for other purposes.
Appendix A

1. IBM Bluemix Local Description

IBM will set up and maintain a private environment for the ordered IBM Bluemix components on Client's supplied computer infrastructure. This will be a private environment in which Client may execute the identified Bluemix services and runtimes.

Client must separately obtain a subscription to the public IBM Bluemix offering for a term equal to that for its order for BluemixLocal. For services and runtimes executed in the private environment, there are no usage charges as those are covered by the fees associated with the private environment itself. All other terms associated with those services in the public IBM Bluemix offering continue to apply.

- Bluemix operational staff will deploy all releases and software updates to Client's instances of Bluemix and related services. The update will be scheduled in advance with the appropriate notification. Specifics regarding maintenance can be found at http://www.ng.bluemix.net/docs/overview/maintainlocal.html, which may be updated by IBM from time to time.

2. IBM and Client’s Requirements

2.1 Client will:

- Provide local cloud infrastructure on Client's computers in conformance with the requirements provided at http://www.ng.bluemix.net/docs/overview/localinfrastructure.html, which may be updated by IBM from time to time;
- Provide IBM complete access to and control over the required cloud infrastructure during the term of the IBM SaaS, except as Client may need to retain access to perform mandatory maintenance and support activities on the infrastructure as described in the requirements referred to above; and
- Support the IBM team during installation, integration for management/monitoring, and ongoing activities.

2.2 IBM will:

- Provide architectural documents for review and discussion prior to implementation;
- Perform initial installation and installation of ongoing updates to the Bluemix Local environment; and
- Assign engineer(s) to support and manage the environment remotely.

3. Specific Option Descriptions

Bluemix Local components may indicate a specific configured capacity (such as gigabytes or transactions per second). Since actual capacity in practice for any configuration of the IBM SaaS varies depending on many factors, the actual capacity in practice may be more or less than the configured capacity.

a. IBM Bluemix Local 64GB Compute Capacity – An environment that permits deployment and execution of Bluemix applications with a cumulative memory capacity of 64 gigabytes.

b. IBM Bluemix Local Compute 16GB Capacity – An extension of the IBM Bluemix Local Compute environment to provide an additional 16 gigabytes of memory capacity.

c. IBM Bluemix Data & Session Cache 50 GB Capacity – An environment that permits deployment and execution of Data Cache and Session Cache instances up to a cumulative capacity of 50 gigabytes.

d. IBM Bluemix Local Access One-Time Set Up – A one time charge for deploying and configuring Client's Local Bluemix Environment.

e. IBM Bluemix Local API Management 500 API Calls Capacity – An environment that permits execution of a private version of IBM API Management for Bluemix within the private environment with a capacity of 500 API calls per second.
Appendix B

The SLA is incorporated into Client's IBM Bluemix Agreement and applicable to all Services delivered to Client. This SLA does not apply to the availability of Third Party Services, which are subject to Third Party Agreements, or to any Services that are not generally available. The SLA is binding only on Client and IBM and does not apply to any third parties, including Client End Users. The issuance of SLA Credits (defined below) is Client's sole and exclusive remedy for any failure by IBM to satisfy the requirements set forth in the SLA.

1. Services Commitments
IBM will use reasonable efforts to meet a service level of 100% for Services and Bluemix Management Services.

2. SLA Credit Claim
To claim a credit, Client must follow the procedure within seven (7) days of the end of the Claimed Outage. IBM will review the claim, and any credit for Verified Outages (“SLA Credits”) will be issued as provided below.

a. “Claimed Outage” means the period (measured in minutes) during which Client claim a Loss of Service during a Measurement Period.
b. “Excluded Minutes” means the period of any outage that is attributed to one or more of the SLA Credit Exclusions during a Measurement Period.
c. “Measurement Period” means a calendar month.
d. “Qualifying Outage Minutes” mean the aggregate of all minutes of a Verified Outage during a Measurement Period, minus any Excluded Minutes.
e. “Services” means an IBM-branded offering presented within the Bluemix catalog.
f. “Bluemix Management Services” means access to Bluemix using command line or web interface to start and stop application instances, scale applications, push new application versions, and view logs.
g. “Loss of Service” means the Client's inability to connect to a Service or the Bluemix Management Services in a region. If Client can connect to at least one instance of a particular Service in the same region, there is no Loss of Service. If Client can connect to either the command line or web interface there is no Loss of Service for the Bluemix Management Services.
h. “Verified Outage” means a Claimed Outage for a particular Service that has been verified by IBM.
i. “IBM Bluemix Agreement” means the Cloud Services Agreement, the International Passport Advantage Agreement, or such other agreement where Client acquires the right to use the Bluemix Services from IBM.
j. “Client” means an entity that is subscribing for IBM Bluemix directly from IBM, and that is not in default of any material obligations, including payment obligations, under its Bluemix Agreement.

3. SLA Credits
For each 30 continuous minute period of Qualifying Outage Minutes for a Service or Bluemix Management Services in a Measurement Period, IBM shall provide an SLA Credit of 5% of the fees for the relevant Service that was subject to the Loss of Service during the Measurement Period.

Any period of Qualifying Outage Minutes for a Service or Bluemix Management Services that is less than 30 continuous minutes shall not be eligible for an award of SLA Credits. Claimed Outages for different Services may not be combined to meet this calculation.

For the purpose of calculating SLA Credits, a Loss of Service for Bluemix Management Services shall be treated as a Loss of Service for the Bluemix runtimes deployed by Client.

Even though the Bluemix Platform and Services are designed and deployed to survive most IaaS network or HW failures. Examples of events that could cause an interruption in the Bluemix service, include but are not limited to: network performance slow down or switch failure, data center power interruption or
disk/memory failure would also create time that cannot be counted against the availability SLA. These
events would also exempt any recovery time that would be necessary to bring the entire Bluemix service
back to full operation after the event.

4. Approved Procedure
Client is eligible to receive SLA Credit, subject to the following process:

(1) Client's identified master administrative user will report a Claimed Outage by opening a ticket
by emailing billing@bluemix.net within 7 days following the end of the Claimed Outage. The
email must include Service type, region, dates and times of the Claimed Outage, error
messages received (if any), contact information, and full description of the interruption of
Service, including logs, if applicable.

(2) IBM will review Claimed Outages against Verified Outages.

(3) IBM determination of SLA Credits is final.

(4) Client agrees to continue to make payment in full for Services while a Claimed Outage is
being reviewed or SLA Credit is being determined.

(5) IBM will communicate the SLA Credits to Client through IBM accounting and the ticket will be
updated. IBM will apply the SLA Credits to the Client's future charges for the relevant Services
subject to IBM standard policies. SLA Credits may not be used to reduce payments due in any
term below zero.

(6) Client must provide all necessary technical data to explain planned or unplanned
changes which may have contributed to the cause of a Bluemix Service or the platform itself.

Ineligible Clients
Clients do not qualify for SLA Credits if they (a) are not current on their payment of fees for the Services
at the time of the report of the Claimed Outage, or (b) have not paid their fees when due for the Services
three or more times in the previous 12 calendar months.

5. Use of SLA Credits
SLA Credits may be used solely for future payments due for the particular Service for which the Service
Credits are issued. SLA Credits may not be sold or transferred, and may not be used until any violations
of the IBM Bluemix Agreement are resolved to IBM's reasonable satisfaction. False or duplicative
Claimed Outages are a violation of the IBM Bluemix Agreement, will incur a one-time charge of $50 per
incident and may, in IBM's discretion, result in a suspension or termination of Services. SLA Credits
expire on termination or expiration of the IBM Bluemix Agreement.

6. SLA Credit Exclusion
SLA Credits do not apply for periods during which the Services are not available for the following reasons:

- IBM is performing system upgrades, enhancements or routine maintenance which is announced on
  the Client Portal at least two days in advance or maintenance determined by IBM to be an
  emergency upon notice provided through the Client Portal (“Scheduled Maintenance”);
- Client's use of the Services or any Client End User's use of the Client Offering in violation of Client's
  IBM Bluemix Agreement;
- Issues relating to Client Content;
- Problems with Client's access to Internet;
- System administration, commands, file transfers performed by Client or Client's representatives;
- Events described in the Force Majeure provision of Client's IBM Bluemix Agreement;
- Suspension of Client's access to the Services as provided in Client's IBM Bluemix Agreement;
- Violation of the AUP;
- Problems arising from Client's software, Client's applications or Client Content;
- Problems caused by hardware or systems provided by Client or a third party.