IBM Terms of Use – SaaS Specific Offering Terms

IBM Bluemix

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, Customer agrees to the ToU.

The ToU is governed by the IBM International Passport Advantage Agreement or the IBM International Passport Advantage Express Agreement, 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

2. Charges and Billing

2.1 Pay As You Go

There is no charge for access to the Bluemix platform. Additional services available through Bluemix may have charges associated with them. If they do, the charge metric (the unit measured by the service) will be described in the service's Service Description. The service may identify a "Free Tier", which is a level of use or a configuration of the service for which no charge is made. Use above that level or use of other configuration will incur the charges identified for the service.

Certain services charge on a monthly usage metric which bases the fee on a unit of service that is used for an entire month. Use or deployment of that service for less than a month will be pro-rated based on the number of days in the month. For all other metrics, all partial usage is rounded up to a full unit of measure.

2.2 Subscription

In addition to Pay As You Go, Bluemix offers a Subscription though which, in exchange for a committed usage level on the Bluemix platform over the chosen Subscription Period, Customer can obtain a discount off the usage charges incurred each month for eligible Bluemix services. Usage charges for Bluemix services over and above the committed usage level will be billed, in arrears, as a Subscription overage.

Subscriptions for Bluemix may not be canceled during their term and will auto-renew at the end of their term at the same usage commitment for the same Subscription period. To prevent automatic renewal, Customer must provide IBM ninety days written notice of cancellation prior to the end of the current Subscription Period.

3. Technical Support

Technical support for IBM Bluemix is available three ways:

3.1 Free Support

All customers of Bluemix are provided Free Support. A consumer of resources provided by the platform can go to the DeveloperWorks Forum (https://developer.ibm.com/bluemix) and post a question about any item found in the Bluemix product. Questions posted to the forum are not provided a service level agreement for response or a commitment to fix. Free Support does not entitle access to our Support Ticket System. All questions or issues are addressed in the Forum.

3.2 Standard Support

Standard Support is priced at a standard percentage of Customer's Bluemix usage charges (exclusive of any discount which is available through a Subscription offering) with a minimum per-month fee, as more fully described on the Bluemix website.

Customers have access to Standard Support through two ways.
● 30 Day Trial user
● At any point after the 30 day Trial, by ordering Standard Support for Customer’s account, by contacting an IBM Sales Representative. Support subscriptions auto-renew at the end of their term for the same term. To prevent automatic renewal, Customer must provide IBM ninety days written notice of cancellation prior to the end of the current Support subscription period.

Standard Support Customers can open tickets in IBM’s Support Ticketing System. IBM’s dedicated support team will triage the ticket based on the initial severity defined by the Customer.

All tickets opened by Standard Support Customers are investigated with the purpose of identifying root cause. When problem diagnostic data is needed to isolate an issue, Customer will be asked for approval to access logs and other problem determination data from Customer’s application to help determine root cause. Not providing access to this data may delay problem resolution. Once root cause analysis is complete, the team will take one of the following actions:

a. Root cause is an IBM Generally Available Service
   If a ticket is opened and the root cause analysis determined that this is a defect in the IBM provided Generally Available service, the ticket will be provided attention based on the severity set by the Customer.

b. Root cause is an IBM Beta Service
   IBM will release services that are classified as Beta. This helps IBM development and marketing teams assess the value of the service in the market and make adjustments before making the service Generally Available. If a ticket is opened and the root cause analysis determines there is a defect in an IBM provided Beta service, then IBM is not obligated to provide a fix. Additionally, the ticket would be handled with a severity 3 or 4 where applicable.

c. Root cause is an Experimental Services
   IBM will release services that are classified as Experimental. These services may be unstable, may change frequently, and may be discontinued with short notice. Services identified as Experimental will be supported via our Bluemix Forums only.

d. Root cause is a Third Party Service
   Third party services are provided by vendors outside of IBM. They can be provided by individual software entities, partners or ISVs. If a ticket is opened and the root cause analysis determines there is a defect in a Third Party Service, then IBM is not obligated to provide a fix. Additionally, IBM will provide a “warm hand off” of the ticket to the third party service provider.

e. Root cause is an Open Source or Community Service
   Open Source or Community services are provided by open source communities outside of IBM. If a ticket is opened and the root cause analysis determines there is a defect in a Community Service, then IBM is not obligated to provide a fix. Additionally, IBM will close the ticket and refer the customer to the community or forum for support.

3.2.2 Technical Support Details

Support Hours of Operation are as follows:
8:00 a.m. – 8:00 p.m. Eastern Standard Time zone, U.S., Monday – Friday (excluding US holidays)

After Hours Support:
After Hours Support (outside of the regular operating hours stated above) is available only for Severity 1 issues on business days, weekends, and holidays. Severity 1 issues require that the client will be available to help us diagnose issues during the 24X7 period otherwise, they are downgraded to severity 2.

To get assistance: Click the Support link under accounts when logged into Bluemix

• Email: support@bluemix.net
• Support web portal: https://support.ibmcloud.com

Customer defines the severity of the issue based on their business needs.
3.3 **Expert Consulting Services**

Expert Consulting Service (ECS) can help speed Customer’s adoption of the Bluemix platform. Consulting services are negotiated individually with each Customer where scope, duration and description of service will be agreed upon and a separate contract will be written.

4. **IBM SaaS Offering Additional Terms**

4.1 **Customer’s Applications**

Customer may not resell access to the IBM SaaS or any additional services to any third party. However, Customer may use the IBM SaaS and any additional services to create and make available Customer’s applications based on these services to Customer’s users. IBM may use cookies and tracking technologies to collect 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](http://www-01.ibm.com/software/info/product-privacy/index.html). Customer is responsible to have appropriate agreements in place with Customer’s users and is responsible for their use of Customer’s applications, including content they provide. Customer is solely responsible for any liability for damages or losses Customer’s users may incur as a result of using Customer’s applications.

4.2 **Compliance with Laws**

Customer is responsible for compliance with all laws, regulations, and contractual terms applicable to any services Customer utilizes, applications Customer develops, or data Customer accesses or distributes. To the extent that IBM requires rights to process content or data as requested by Customer or Customer’s users, Customer is responsible for obtaining those rights prior to providing that content or data. For Customer’s applications where Customer permits its users to log into Customer’s application using Facebook, Google, or other third party user credentials, these rights include permission from Customer’s user for IBM to receive and process their email address, account ID, display name, telephone number, a URL to their profile picture, or other identifying information that is provided by that third party service. Customer understands that IBM may use global resources (non-permanent residents used locally and personnel located world-wide) to remotely support the delivery of Bluemix and the additional services. Customer agrees not to provide any content or data which is controlled as a defense article under the US International Traffic in Arms Regulations (ITAR) or under any other country’s laws or regulations or which requires an export license or is otherwise restricted from export to any personnel under applicable export control laws.

4.3 **Safe Harbor Compliance**

The IBM SaaS does not comply with the US-EU and US-Swiss Safe Harbor Frameworks.

4.4 **Enabling Software**

Bluemix and the additional services may provide enabling software which is intended to be used to access the services. Unless other terms are provided in the individual service's Service Description, Customer may use the enabling software only associated with Customer’s use of the IBM SaaS in the manner described in the documentation, for the length of the term of the IBM SaaS. To the extent the enabling software contains sample code, Customer has the additional right to make derivative works of the sample code and use them consistent with this grant. The enabling software is provided subject to the Service Level Objective, if any, as a component of the IBM SaaS, but is otherwise provided “AS IS”.

4.5 **Data Collection**

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.
4.6 Beta Services

Some of the services available within Bluemix may be provided as a Beta Service. Beta Services will be identified as such in the Bluemix UI. Unless the Beta Service provides different terms, Beta Services are subject to the following:

a. The Beta Service is an IBM SaaS that IBM is developing and testing. Customer is authorized to use the Beta Service during the specified beta period for the purpose of evaluating its functionality and to provide feedback to IBM or the third party service provider. IBM may provide additional supporting details and information that apply to Customer’s access and use of a Beta Service.

b. Beta services may not comply with the normal Bluemix security practices and do not comply with the US-EU and US-Swiss Safe Harbor Frameworks and are not designed to comply with any specific governmental regulation or specific security measures. Customer agrees not to input content that may be subject to any such regulations or required additional security measures.

c. The Beta Service may not be at a level of performance or compatibility of generally available services IBM markets and is not fully tested, including any data protection and security features. Beta Services are not designed for use in a production environment or for commercial purposes and any such use is at Customer’s own risk. IBM does not guarantee it will make a Beta Service or any similar services available, or if made available, it will be similar to the Beta Service. If a generally available service is offered, IBM is under no obligation to offer migration capabilities or services.

d. Generally there are no charges for use of a Beta Service during the beta period, unless specifically specified by IBM or a third party service provider. If any authority imposes a custom, duty, tax (including withholding tax), levy or fee for the import or export, transfer, access or use of a Beta Service or third party service, then Customer is responsible to pay any such amount imposed.

e. Customer may use a Beta Service for the beta period IBM specified or until IBM withdraws or terminates the Beta Service. Customer may terminate use of a Beta Service at any time by notifying IBM. Customer is responsible to remove any proprietary content Customer wishes to retain prior to expiration or termination of a Beta Service. IBM may at any time suspend, revoke, limit or refuse participation in or use of a Beta Service. Content may be destroyed upon the expiration or cancellation of the Beta Service unless specific migration to the related generally available IBM SaaS offering is available.

f. IBM may in its reasonable discretion, change the terms applicable to a Beta Service, modify the computing environment, or withdraw features of a Beta Service, in whole or in part by providing notice. Continued use is Customer’s acceptance of any such change. If Customer does not accept a change, Customer is responsible to discontinue use upon such notice.

g. If there are no charges, IBM’s entire liability for all claims in the aggregate arising from Customer’s use of a Beta Service acquired hereunder will not exceed the amount of any actual direct damages up to U.S. $1,000.00 (or equivalent in local currency). Beta Services are provided without warranties of any kind.

h. Customer agrees IBM may use all feedback and suggestions Customer provides. IBM may use cookies and tracking technologies to collect 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. Where required by applicable law, Customer has notified the users and obtained their consent to do all of the above.

4.7 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.
Appendix A

1. **IBM Bluemix Platform Description**

This IBM SaaS is an application development environment that delivers the speed and flexibility of a platform-as-a-service (PaaS). It allows developers to compose and build enterprise-grade applications for the cloud era by providing access to IBM's software portfolio as composable services.

2. **Bluemix UI**

Upon acceptance by IBM, Customer will be enabled to access the IBM SaaS environment. Customer will have the ability to access the IBM SaaS portal, use available API and command line interfaces to deploy available applications, and leverage IBM APIs to build applications. The Bluemix online user interface, APIs, and command line interface are collectively referred to as the "Bluemix UI" and may be presented only in English. A catalog of additional services will be provided that Customer can add to Customer’s account via the Bluemix UI.

Through the Bluemix UI, Customer can authorize other users to collaborate with Customer on Customer’s applications. That authorization may include the ability for those users to deploy applications, select additional services, and otherwise incur expenses associated with Customer’s account. Customer is responsible for any actions of users Customer has authorized and any associated charges.

3. **Bluemix Services**

Additional services are subject to the Agreement and this ToU. A service may provide its own Service Description, available through the Bluemix UI, which may provide additional or different terms that override inconsistent provisions in this ToU. For example, a Service Description may provide different pricing terms, technical support provisions, or identification of enabling software. “Cloud Services” as described in these Service Descriptions are “IBM SaaS” offerings under this ToU. Some non-IBM services will be subject to their own license terms and not be subject to the Agreement or this ToU. Deployment and use of additional services constitutes agreement with the terms associated with the relevant services in the Bluemix UI.

The documentation for Bluemix and any additional services may include usage guidelines and/or limitations to preserve the performance, responsiveness, or integrity of the Bluemix platform. Customer agrees to use Bluemix and the additional services in compliance with those guidelines and understands that applications that violate these guidelines may be terminated automatically by the system or by Bluemix system administrators.

Bluemix and the individual services available through it are offered on a month-to-month basis. IBM will provide Customer at least 30 days notice on the Bluemix site of any changes to the Agreement, this ToU, the Service Description for an additional service, or withdrawal of an additional service. Customer’s continued use of Bluemix or the additional service after the change effective date constitutes acceptance of the changed pricing or terms.