

Enterprise Cloud - Instanced Based – Service Level Agreement (SLA)

The following terms will apply to the availability of the Enterprise Cloud application and IBM Infrastructure. This SLA provides Customer's sole and exclusive remedy for IBM's failure to meet the standards and commitments established herein. All standards and commitments are subject to the limitations and exclusions set forth herein.

1. Network, Data Center, and Infinistructure Availability. The IBM Network Infrastructure extends from the Infinistructure computing resources to the data center located router that provides the outside interface of each of IBM's WAN connections to its backbone providers. The IBM Data Center Infrastructure includes HVAC, managed power systems, backup generators, and battery backup systems. Infinistructure includes the servers, the storage, the backup infrastructure and the network related to the Infinicenter Application. The IBM Network Infrastructure, the Data Center Infrastructure, and Infinistructure (referred to herein as the "IBM Infrastructure"), subject to the exceptions in sections 5(a) and 5(b), will be available for a percentage of each calendar month equal to the Availability Calculation specifically set forth in section 4 of this SLA.

2. Infinicenter Application Availability

a. The Infinicenter Application will, subject to the exceptions listed in sections 5(a) and 5(b), be available for a percentage of each calendar month equal to the Service Level Commitment as specifically set forth in this Service Level Agreement (referred to herein as the "Availability Commitment"). The availability of the Infinicenter Application for a given month will be calculated according to the formulas in section 4.

b. For purposes of this calculation, the Infinicenter Application will be deemed to be unavailable if it, based upon availability of keyword monitoring of the IBM benchmark transaction, does not respond to a request issued by IBM's monitoring software (referred to herein as "Unavailable"). Further, the Solution as described in the SOW will not be deemed Unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth in section 5 of this SLA. IBM's records and data will be the sole basis for all SLA calculations and determinations, provided that Customer may audit IBM's records and data for the sole purpose of determining the accuracy of SLA calculations and determinations in accordance with section 7(f) of this SLA.

3. Dedicated Device Availability

a. A Dedicated Device is defined as any device that is deployed into Customer's Enterprise Cloud Services but is not directly related to or part of Infinistructure or the Infinicenter Application. The Dedicated Device will, subject to the exceptions listed in section 5(a) and 5(b), be available for a percentage of each calendar month equal to the Service Level Commitment as specifically set forth in this Service Level Agreement. The availability of a Dedicated Device for a given month will be calculated according to the formula in section 4.

b. For purposes of this calculation, a Dedicated Device will be deemed unavailable if IBM's Network Infrastructure or Data Center is not available.

4. Availability Calculation. The availability of the IBM Infrastructure, Infinicenter Application and Dedicated Device for a given month will be calculated according to the following formula (referred to herein as the "Availability" or "Usage Based Availability"):

a. Where: Total minutes in the month= TMM

Total minutes in month unavailable = TMUA

And: Availability = ((TMM-TMU) x 100)/TMM

b. Where: Total minutes used = TMU

Total minutes in where usage was unavailable = TMUA

And: Usage Based Availability = ((TMU-TMUA) x 100)/TMU

5. Exceptions

a. The Infinicenter Application, IBM Infrastructure and/or Dedicated Device will not be considered to be Unavailable for any outage that results from any maintenance performed by IBM (i) of which Customer is notified at least 24 hours in advance; (ii) during Customer's implementation period; (iii) during IBM's then-current standard maintenance windows (collectively referred to herein as "Scheduled Maintenance"); (iv) as a result of Customer's request outside of the normally scheduled maintenance; (v) Gateway(s) deployed in Customer's Enterprise Cloud Services and managed by Customer for use with the Data Backup and Restore Services, or (vi) Customer's modification, disruption, or acts of omission of the Data Backup and Restore Gateway such that it impedes IBM's ability to make Data Backup and Restore Services available to Customer.

b. The Infinicenter Application or Dedicated Device will not be considered Unavailable for any outage due to (i) Customer's information content or application programming, acts or omissions of Customer or its agents, failures of equipment or facilities provided by Customer, network unavailability outside of the IBM Network;(ii) issues arising from bugs or other problems in the software, firmware or hardware of IBM's suppliers that are publicly known and a known remedy has not yet been released from its suppliers; (iii) Delays or failures due to circumstances beyond IBM's reasonable control that could not be avoided by its exercise of due care; or (iv) Gateway unavailability. The configuration being provided under this Agreement is based on assumptions made by Customer. As a result, IBM will not be responsible, under this SLA or otherwise, for any performance issues caused by inaccuracies in these assumptions, including but not limited to performance problems caused by traffic volume, number of concurrent user sessions or customer's overutilization of the configuration.

6. Availability Commitment.

a. The configuration of the Services set forth in the Statement of Work has been designed by the parties to provide the performance level contemplated by the Availability Commitment in this SLA. If IBM notifies Customer that it has determined that Customer's configuration is not suited to provide this level of performance, this SLA will be suspended until Customer and IBM agree upon and implement a new or modified configuration designed to provide this level of performance.

b. The Infinicenter Application, IBM Infrastructure and Dedicated Device(s) shall adhere to the following Availability Commitments:

99.9% - Dedicated Device

99.5% - Infinicenter Application

99.9% - IBM Infrastructure

7. Remedies. Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below.

a. If the Availability of Infinicenter Application, IBM Infrastructure or Dedicated Devices (as calculated in section 4 above) for a given month is less than the applicable Availability Commitments, Customer will receive one (1) Service Credit (as defined below) for the Enterprise Cloud Services. In addition, for the first 100 minute increment by which the allowable unavailability is exceeded, Customer will receive one (1) Service Credit for the Enterprise Cloud Services. Thereafter, for each additional 100 minute increment by which the allowable outage is exceeded, Customer will receive one (1) additional Service Credit for the Enterprise Cloud Services.

b. For purposes of this SLA, a "Service Credit" will be deemed to be an amount equal to 1/30th of the monthly charges, including Instance Based billing charges for those customers who have subscribed to Instance Based Resources during the month in which the Enterprise Cloud Services were Unavailable. The total Service Credit for a given month will, in no event, exceed an amount equal to 50% of the monthly charges, including Instance Based billing charges for those customers who have subscribed to Instance Based Resources for the month in which the Enterprise Cloud Services were Unavailable. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All service credits will be calculated as stated in section 4a above assuming a thirty (30) day month. Customer's right to receive Service Credit(s) will be Customer's exclusive remedy for IBM's failure to satisfy the Availability Commitment.

c. For customers who have subscribed to Instance Based Resources, for purposes of this SLA, a "Service Credit" will be deemed to be an amount equal to 1/30th of the Metered Usage charges Customer is billed during the month in which the Enterprise Cloud Services were Unavailable. For such customers, the total Service Credits for a given month will, in no event, exceed an amount equal to 50% of the total Metered Usage charges billed to Customer during the month the Enterprise Cloud Services were Unavailable. Service Credits will be recognized for billing purposes in the month following the month giving rise to such Service Credits. All Service Credits will be calculated as stated in section 4b above. Customer's right to receive service credit(s) will be Customer's exclusive remedy for IBM's failure to satisfy the Availability Commitment.

d. In the event Customer is not current in its payment obligations when an outage occurs, remedies will accrue, but Service Credits will not be issued until Customer becomes current in its payment obligations.

e. To receive Service Credits, Customer must submit a written request or notify IBM's Customer Service representative, within 30 days after the date which the Enterprise Cloud Services were Unavailable, or Customer's right to receive Service Credits with respect to such unavailability will be waived.

f. No more than once each calendar quarter, upon ten (10) days written notice from Customer, IBM will make available its records and data relevant to calculating Availability so that Customer may audit such records and data for the sole purpose of determining the accuracy of SLA calculations and determinations

8. Effective Date. This SLA will become effective upon the Activation Date.