



IBM Terms of Use – SaaS Specific Offering Terms

IBM Social Media Analytics

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: <http://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/>.

The ToU is in addition to 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. Should a conflict arise between the General Terms and these SaaS Specific Offering Terms, these SaaS Specific Offering Terms will prevail over the General Terms.

Customer may use the IBM SaaS only if Customer first accepts the Terms of Use. By ordering, accessing or using the IBM SaaS, Customer agrees to the ToU. By clicking an "Accept" button after being presented with these SaaS Specific Offering Terms, you are also accepting the General Terms.

IF YOU ARE ACCEPTING THE ToU ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU. IF YOU DO NOT AGREE WITH THE ToU OR DO NOT HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU THEN DO NOT IN ANY MANNER USE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED AS PART OF THE IBM SAAS.

Part 1 – IBM Terms

1. IBM SaaS

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

- IBM Social Media Analytics Software as a Service ("SMA SaaS")
- IBM Social Media Analytics Software as a Service Jump Start

2. Charge Metrics

The IBM SaaS offering is sold under the following charge metrics:

- a. Access is a unit of measure by which the IBM SaaS may be obtained. An Access is the rights to use the IBM SaaS. Customer must obtain a single Access entitlement in order to use the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- b. Thousand Document is a unit of measure by which the IBM SaaS can be obtained. A Document is a finite volume of data that is enveloped within a document header and trailer record that marks its beginning and end or any physical or electronic document type defined in the IBM SaaS, including but not limited to: invoices, sales orders, purchase orders, quotes, schedules, plans, returns, shipments, receipts, and financial instruments. Each Thousand Document entitlements represents one Thousand Documents. Sufficient Thousand Document entitlements must be obtained to cover the total number of Documents processed by the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- c. Engagement is a unit of measure by which the services can be obtained. An Engagement consists of professional and/or training services related to the IBM SaaS. Sufficient entitlements must be obtained to cover each Engagement.

3. Charges and Billing

3.1 Billing Options

The amount payable for the IBM SaaS is specified in a Transaction Document. The billing options for the IBM SaaS subscription fee are as follows:

- a. Per Month (in arrears)
- b. Per Quarter (upfront)
- c. Per Annum (upfront)
- d. Entire Commitment (upfront)

The selected billing option will be valid for the length of the term specified in a PoE or a Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of the billing cycles in a year.

3.2 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.

3.3 Overage Charges

If Customer's actual usage of the IBM SaaS exceeds the entitlement specified in a PoE or Transaction Document, Customer will be invoiced monthly for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document.

3.4 Remote Services (Human Based)

The Social Media Analytics Software as a Service Jump Start services offering will be billed upfront as specified in the Transaction Document. Services are purchased per Engagement and expire 90 days from purchase regardless of whether all hours have been used.

4. Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM may provide the IBM SaaS User with an Account identification and password. Customer is responsible for ensuring that each IBM SaaS User manages and keeps their Account information current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

Customer is responsible for ensuring that each IBM SaaS User protects their Account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS on Customer's behalf.

5. Renewal of a Subscription Period

5.1 Automatic Renewal of a Subscription Period

If Customer's PoE designates the subscription renewal as automatic, Customer may renew Customer's expiring IBM SaaS Subscription Period by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of the Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, THE EXPIRING IBM SaaS SUBSCRIPTION PERIOD IS AUTOMATICALLY RENEWED FOR EITHER A ONE YEAR TERM OR THE SAME DURATION AS THE ORIGINAL TERM UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. OTHERWISE, CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

5.2 Continuous Billing

If Customer's PoE designates the subscription renewal as billing will continue following the end of the Subscription Period, Customer will continue to have access to the IBM SaaS and will be billed for usage of the IBM SaaS on a continuous billing basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer must provide IBM with ninety (90) days written notice requesting cancellation of their IBM SaaS. Upon cancellation of Customer's access to the IBM SaaS, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

5.3 Customer Renewal Required

If Customer's PoE designates the subscription renewal as one that terminates, the IBM SaaS offering will not renew at the end of the initial Subscription Period. In order to continue use of the IBM SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the IBM SaaS. Please contact an IBM sales representative or Customer's reseller, as applicable, to obtain a new IBM SaaS subscription.

6. Technical Support

During the Subscription Period, technical support is provided for the IBM SaaS as set forth at <https://support.coremetrics.com/FileManagement/Download/dbce75d712f44e2f9fa90fef2681797b> or a subsequent URL provided by IBM. Technical support is included with the IBM SaaS and is not available as a separate offering.

7. IBM SaaS Offering Additional Terms

7.1 Supplemental Definitions

"**IBM SaaS**", as defined in the Agreement, is a software service and does not include Content, Third Party Applications, nor Third Party Sites.

"**Content**" as defined in the Agreement, includes information or data, in whole or in part, provided by or for Customer, or accessed on Customer's behalf by IBM or its Suppliers, from Third Party Sites.

"**Third Party Applications**" means applications and software provided by individuals or entities other than IBM that interoperate with the IBM SaaS.

"**Third Party Sites**" refers to third party websites, including but not limited to, those that include social media content, such as Facebook, Klout, and Twitter.

7.2 Internal Use

In addition to the restrictions in the Agreement regarding use of IBM SaaS, reports, results, and other output obtained from IBM SaaS are provided for Customer's internal use only, and may not be used to provide services to third parties. Customer may not sublicense, rent, lease, or otherwise make the reports, results, or other output obtained from IBM SaaS available to third parties.

7.3 Access and Use of Content, Third Party Applications, and Third Party Sites

IBM SaaS provides a means for Customer to select and access Content from Third Party Applications and Third Party Sites for Customer's use with IBM SaaS. Content is neither owned nor controlled by IBM or its suppliers, and IBM and its suppliers do not license or otherwise provide any rights in the Content. Content may include materials that are illegal, inaccurate, misleading, indecent, or otherwise objectionable. IBM or its suppliers have no obligation to review, filter, verify, edit or remove any Content. However, IBM or its suppliers may, at their sole discretion, do so.

IBM SaaS may contain features designed to interoperate with Third Party Applications and Third Party Sites (e.g., Facebook, or Twitter applications). In addition to the authorizations required in the Agreement for Content, Customer shall provide IBM necessary authorizations and access to Content, Third Party Applications, and Third Party Sites to operate IBM SaaS on Customer's behalf. Customer may be required to enter into separate agreements with the third parties for the access to or use of Content, Third Party Applications and Third Party Sites. IBM is not a party to any such separate agreement and as an express condition of this ToU. Customer agrees to comply with the terms of such separate agreements.

7.4 Restrictions

In addition to conditions of use regarding IBM SaaS specified in the Agreement, Customer shall not:

- a. access or use Third Party Sites, Third Party Applications, or Content with IBM SaaS, including but not limited to copying, modifying or creating any derivative works, if doing so violates applicable laws or the terms of any third party licenses, agreements, or other terms or restrictions;
- b. distribute, demonstrate, display, or otherwise make available IBM SaaS or Content to any third party, unless permitted under agreement with the Content provider;
- c. access or use any part of the IBM SaaS to create or contribute to a competitive product or service.

7.5 Termination based on Third Party Actions

7.5.1 Termination by IBM

In addition to the rights of suspension and termination in the Agreement, if a provider ceases to make Third Party Site, or Third Party Application, or Content available or imposes terms that present a material burden or risk to IBM and its suppliers, customers, or any third party, or if IBM knows or has reason to believe that the processing of particular content through the IBM SaaS infringes the rights (including intellectual property rights) of any third party, IBM may cease providing the corresponding features of IBM SaaS without entitling Customer to any refund, credit, or other compensation.

Customer will promptly notify IBM of any event or circumstance related to Customer's use of the IBM SaaS of which Customer becomes aware that could lead to a claim or demand against Customer's use of IBM SaaS. Customer will provide all relevant information relating to such event or circumstance to IBM at IBM's request.

7.5.2 Termination by Customer

In addition to the rights of suspension and termination in the Agreement, if a provider ceases to make a Third Party Application, or Third Party Site, or Content available or materially changes the terms upon which it is available, and Customer demonstrates that such unavailability significantly and permanently impairs the Customer's ability to use IBM SaaS, then Customer may notify IBM of Customer's intent to terminate their IBM SaaS subscription, in whole or in part. Such IBM SaaS subscription shall terminate effective 30 days after such notice, unless availability of the subject third party services has resumed during the 30-day period. In the event of termination under this section, IBM will refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions subsequent to the effective date of termination.

Customer shall have no rights to terminate based on any statement by IBM regarding future direction or intent regarding IBM SaaS or any Third Party Site, Third Party Application, or Content. Except as provided herein, Customer shall have no right to terminate, nor be entitled to any refunds, credits, or other compensation, for unavailability of any third party products or services.

7.5.3 Access and Storage

Upon termination or expiration of this Agreement, IBM shall have no obligation to cache, store, or otherwise make available any Customer queries, Content, or results and other output obtained by Customer from use of IBM SaaS.

7.5.4 Usage Limits

Customer's use of IBM SaaS may be subject to limitations such as limits on storage, number of queries, or other limits or restrictions. As an additional Usage Limitation, the Customer may not access the IBM SaaS for purposes of monitoring the availability, performance or functionality of IBM SaaS, or for any other benchmarking or competitive purposes. Usage limits will be documented in a Proof of Entitlement, Transaction Document, user documentation or in the online IBM SaaS. The IBM SaaS may provide on demand information that enable Customer to monitor usage. If a Customer exceeds usage limits, IBM may at its discretion, work with Customer to reduce the usage so that it complies with usage limits. If Customer exceeds applicable usage limits, IBM may require Customer to execute a Proof of Entitlement or Transaction Document for additional IBM SaaS and/or invoice Customer for excess usage. In such instances, Customer agrees to execute any required additional Proof of Entitlement or Transaction Documents and/or pay additional invoices.

7.6 Cookies

Customer agrees that 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>.

7.7 Copyright Infringement

It is IBM's policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please visit the Digital Millennium Copyright Act Notices Page at <http://www.ibm.com/legal/us/en/dmca.html>.

7.8 Prohibited Uses

The following uses are prohibited by Red Hat:

"No High Risk Use": Customer may not use the IBM SaaS in any application or situation where the IBM SaaS failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of IBM SaaS for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

IBM Terms of Use

Part 2 – Country-unique Terms

The following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unmodified and in effect. This Part 2 is comprised of amendments to this Terms of Use and is organized as follows:

- Americas country amendments;
- Asia Pacific country amendments; and
- Europe, Middle East, and Africa country amendments.

AMERICAS COUNTRY AMENDMENTS

BELIZE, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, AND PANAMA

5.1 Automatic Renewal of a Subscription Period

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE":

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

ARGENTINA, BRAZIL, CHILE, COLUMBIA, ECUADOR, MEXICO, PERU, URUGUAY, VENEZUELA

5.1 Automatic Renewal of a Subscription Period

Does not apply for Public Bodies who are subject to the applicable Public Sector Procurement Legislation.

BRAZIL

5.1 Automatic Renewal of a Subscription Period

The following is added after the second paragraph:

The transaction document will describe the process of the written communication to Customer containing the applicable price and other information for the renewal period.

UNITED STATES OF AMERICA

5.1 Automatic Renewal of a Subscription Period

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 5.1 Automatic Renewal of a Subscription Period:

CUSTOMER MAY TERMINATE THE IBM SaaS AT ANY TIME AFTER THE END OF THE INITIAL SUBSCRIPTION PERIOD ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING IBM SaaS SUBSCRIPTION PERIOD. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

ASIA PACIFIC COUNTRY AMENDMENTS

BANGLADESH, BHUTAN, AND NEPAL

5.1 Automatic Renewal of a Subscription Period

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in 5.1 Automatic Renewal of a Subscription Period:*

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, AND UNITED ARAB EMIRATES

5.1 Automatic Renewal of a Subscription Period

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in 5.1 Automatic Renewal of a Subscription Period:*

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

Appendix A

1. **IBM Social Media Analytics Software as a Service**

IBM Social Media Analytics Software as a Service is an online service that allows Customer to access Content from certain Third Party Applications and/or Third Party Sites, subject to availability of the Third Party Sites and/or Third Party Applications, and permits IBM SaaS Users to define topics, create and submit queries, perform interactive analysis, and view results using pre-packaged reports. Customer is responsible for results obtained from the use of the IBM SaaS (including optional Jump Start services).

2. **IBM Social Media Analytics Software as a Service Jump Start**

IBM Social Media Analytics Software as a Service Jump Start allows IBM SaaS User up to 40 hours, during the initial 90 day period, of assistance regarding the functionality of IBM Social Media Analytics as a Service.

Service Level Agreement

This Service Level Agreement (SLA) is for the following IBM SaaS and is applicable if specified in Customer's Proof of Entitlement (POE) or Transaction Document:

- IBM Social Media Analytics Software as a Service

IBM provides this SLA to its Customers subject to the following terms. The version of this SLA that is current at the commencement or renewal of the term of your subscription will apply. You understand that this SLA does not constitute a warranty to you.

1. Definitions

- a. "Authorized Contact" means the individual you have specified to IBM who is authorized to submit Claims under this SLA.
- b. "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.
- c. "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.
- d. "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.
- e. "Customer" means an entity subscribing for the Service directly from IBM, and which is not in default of any material obligations, including payment obligations, under its contract with IBM for the Service.
- f. "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, 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 Customer or a third party on Customer's behalf.
- g. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- h. "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.
- i. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.
- j. "Service" means the IBM SaaS offerings to which this SLA applies, named on the first page of this SLA. This SLA applies to each Service individually and not in combination.
- k. "Service Level" means the standard set forth below by which IBM measures the level of service it provides in this SLA.

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 Service, and not the monthly subscription fee for each individual Service. You may only submit Claims relating 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.

If you purchased the Service from a valid IBM reseller in a remarketing transaction in which IBM maintains primary responsibility for fulfilling the Service and SLA commitments, then the Availability Credit will be based on the then-current Relationship Suggested Value Price (RSVP) for the Service in effect for the Contracted Month which is the subject of a Claim, discounted at a rate of 50%.

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

Availability Percentage during a Contracted Month	Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)
< 99.0%	2%
< 97.0%	5%
< 95.0%	10%

"Availability Percentage" is calculated as: (a) the total number of minutes in a Contracted Month minus the minutes of Planned System Downtime, minus (b) the total number of minutes of non-scheduled Downtime in a Contracted Month, divided by (c) the total number of minutes in a Contracted Month (minus the minutes of Planned System Downtime), with the resulting fraction expressed as a percentage.

Example: 500 minutes total non-scheduled Downtime during Contracted Month

<p>43,200 total minutes in a 30 day Contracted Month - 200 minutes of Planned System Downtime - 500 minutes Downtime = 42,500 minutes</p> <hr/> <p>43,200 total minutes (- 200 minutes of Planned System Downtime) in a 30 day Contracted Month = 43,000 minutes</p>	<p>= 2% Availability Credit for 98.8% Achieved Service Level</p>
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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 environments, including but not limited to test, disaster recovery, Q&A, or development.
- Claims made by an IBM Customer's users, guests, and participants of the Service.

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.