



IBM Terms of Use – SaaS Specific Offering Terms

IBM Marketing Cloud

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/slabd.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, 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 Marketing Cloud Standard
- IBM Marketing Cloud Standard - Additional Marketing Interactions
- IBM Marketing Cloud B2B Standard
- IBM Marketing Cloud B2B Standard - Additional Records
- IBM Marketing Cloud - Additional User
- IBM Marketing Cloud - Additional Email Insight Opens
- IBM Marketing Cloud - Budget and Expense Planning Extension
- IBM Marketing Cloud - Budget and Expense Planning Additional Users
- IBM Marketing Cloud - Budget and Expense Planning Additional Connector

2. Charge Metrics

The IBM SaaS is sold under one of the following charge metric(s) as specified in the Transaction Document:

- 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. Event is a unit of measure by which the IBM SaaS can be obtained. Event entitlements are based on the number of occurrences of a specific event related to the use of the IBM SaaS. Event entitlements are specific to the IBM SaaS and the type of event may not be exchanged, interchanged, or aggregated with other Event entitlements of another IBM SaaS or type of event. Sufficient entitlements must be obtained to cover every event that occurs during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.
- c. Authorized User is a unit of measure by which the IBM SaaS can be obtained. Customer must obtain separate, dedicated entitlements for each unique Authorized User given access to the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- d. 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.
- e. Connection is a unit of measure by which the IBM SaaS can be obtained. A Connection is a link or association of a database, application, server, or any other type of device to the IBM SaaS. Sufficient entitlements must be obtained to cover the total number of Connections which have been or are made to the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.

- f. Database Record is a unit of measure by which the IBM SaaS can be obtained. A Database Record is the collection of fields in a database related to a single entity and accessible as a single unit. Each Thousand Database Record entitlement represents one Thousand Database Records. Sufficient Thousand Database Record entitlements must be obtained to cover the total number of Database Records available to be processed 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.

3.1 Set-Up Charges

An initial one-time setup fee applies at the rate and billing term specified in the Transaction Document. Based on the IBM SaaS base offering chosen, the corresponding mandatory setup service will provision Client for use of the selected IBM SaaS offering. Setup services available are as follows:

- IBM Marketing Cloud Standard – Onboarding Services
- IBM Marketing Cloud B2B Standard – Onboarding Services

The following setup service will be charged at the rate and billing term specified in the Transaction Document when Authorized User entitlements to IBM Marketing Cloud – Budget and Expense Additional Users are ordered:

- IBM Marketing Cloud – Budget and Expense Planning Onboarding Services

3.2 Partial Month Charges

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

3.3 Overage Charges

If Customer's actual usage of the IBM SaaS during the measurement period exceeds the entitlement stated on the PoE, then Customer will be invoiced for the overage, as set forth in the Transaction Document.

Customer will be invoiced in arrears for overage charges each month, at the overage rate specified in the PoE, once the total aggregate has been reached. Such overage charges are due in addition to the base monthly entitlement charge.

If the Subscription Period is greater than 12 months, the aggregate total number of entitlements will be based on 12 monthly measuring periods. The aggregate total will reset to zero after the 12th monthly measuring period. Overage charges for the next 12 monthly measuring periods will not be due until the actual interaction usage exceeds the total number of entitled interactions in aggregate for such 12 monthly measurement periods.

For Customers leveraging ramp periods, each period is treated in the same manner as the subscription period and the same principles apply.

If a Subscription Period is less than 12 months or less than 12 monthly periods remain in a Subscription Period, the number of monthly entitlements remaining in a subscription will be used for the total number of entitled interactions in aggregate.

- a. Example 1: Customer has a 12 month Subscription Period and has acquired 10 additional Authorized Users under the IBM Marketing Cloud Additional User entitlement. If Customer enables more than 10 Authorized Users before the end of the 12 month Subscription Period, Customer will be invoiced the following month for the quantity in excess and all usage in the coming months will be billed in arrears till the end of the Subscription Period.
- b. Example 2: Customer has a three year Subscription Period and has acquired 10 additional Authorized Users under the IBM Marketing Cloud Additional User entitlement. If Customer enables more than 10 Authorized Users before the end of the first 12 months period, Customer will be invoiced the following month for the quantity in excess and all usage until the end of the 12 months period. At the end of the each 12 months period, the usage count will reset. If Customer enables more than 10 Authorized Users before the end of the next 12 months period, Customer will be invoiced the following month for the quantity in excess and all usage in the coming months will be billed in arrears until either the usage count is reset or the end of the remaining Subscription Period.

3.4 Pay Per Use Charges

Client may use IBM Marketing Cloud Standard measured by 1,000 Events, IBM Marketing Cloud B2B Standard measured in increments of 10,000 Database Records, and IBM Marketing Cloud Additional Email Insights Opens measured in increments of 100,000 Events on a pay per use basis. Client will be charged for the amount of Events or Database Records, as applicable, used each month at the rate specified in the Transaction Document.

4. IBM SaaS Subscription Period Renewal Options

Customer's PoE will set forth whether the IBM SaaS will renew at the end of the Subscription Period, by designating one of the following:

4.1 Automatic Renewal

If Customer's PoE states that Customer's renewal is automatic, Customer may terminate the expiring IBM SaaS Subscription Period by written request to Customer'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.

4.2 Renewal Required

When the PoE states that Customer's renewal type is "terminate", 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 is provided for the IBM SaaS offering and Enabling Software, as applicable, during the Subscription Period. Such technical support is included with the IBM SaaS and is not available as a separate offering.

6. IBM SaaS Offering Additional Terms

6.1 Enabling Software

This IBM SaaS offering may include Enabling Software provided by IBM or a third party supplier. If Customer downloads or installs any Enabling Software, Customer agrees not to use such Enabling Software for any purpose other than to facilitate or enable Customer's access and use of the IBM SaaS. If Enabling Software is presented with a separate license agreement (for example, the IBM International License Agreement for Non-Warranted Programs ("ILAN") or other IBM or third party license agreement) at the time of installation or download, such separate agreement will govern its use. Customer agrees that Customer accepts such terms by accepting this ToU or downloading, installing, or using the Enabling Software.

6.2 EU Data Protection

If Customer makes Personal Data available to the IBM SaaS, as between the Customer and IBM, Customer is considered the sole controller of the Personal Data, and Customer appoints IBM as a processor to process (as those terms are defined in EU Directive 95/46/EC) such Personal Data. IBM will only process such Personal Data to the extent required to make the IBM SaaS available in accordance with this ToU. IBM shall reasonably cooperate with Customer in its fulfillment of any legal requirement, including providing Customer with access to the Personal Data. Customer agrees that IBM may process Content made available to the IBM SaaS, including any Personal Data, across country borders to IBM in the United States. If IBM changes the way it processes or secures Personal Data and such change causes Customer to be noncompliant with applicable data protection laws, Customer may terminate the affected IBM SaaS within 30 days of IBM's notification of the change.

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 Distribution Lists

Customer will not use any distribution lists with the IBM SaaS that include persons who have not given permission to be included on such list for the purpose of receiving email communications specifically from Customer, unless Customer has an existing business or personal relationship with such persons. Use of lists or data generated through affiliate marketing practices is expressly prohibited in all cases. Customer is required to include a valid opt-out mechanism in each message.

6.5 No Resale

Customer's right to use the IBM SaaS is personal to the Customer. Customer shall not resell the IBM SaaS or provide third parties (other than employees or contractors working on Customer's behalf) with access to the IBM SaaS without IBM's prior written consent.

6.6 Data Retention

Specific data elements of the IBM SaaS shall be available within the IBM SaaS as follows: email messages and content, unused or inactive databases and templates - 450 days; web tracking for known visitors - 180 days; web tracking for anonymous visitors - 30 days; and Universal Behaviors - 180 days (the "Data Retention Period"). These data elements may be removed from IBM's network and systems after the Data Retention Period has expired, and in any event, IBM may destroy all copies of these data elements, and any other related Customer data, 30 days following termination or expiration of the Subscription Period. Customer will retain back-up copies of all content provided for use in connection with the IBM SaaS.

6.7 Third Party Code Notices

The IBM SaaS includes the following software which may not be used for Evil purposes: janrain4j_1.1.0, JSON, JSON-lib-2.3, JDK15, flexjson, and packtag.

Appendix A

IBM Marketing Cloud, a cloud-based digital marketing platform, allows marketers to achieve a return on investment (ROI) through the following key capabilities:

- Design and automate consistent, cross-channel experiences, through email, mobile, web, and social channels.
- Use analytics to drive marketing decisions and customer engagement.
- Improve ROI through a cloud-based digital marketing platform that integrates with other customer data sources and applications.

IBM Marketing Cloud includes the following new, solution-based packages and services that map to marketer needs to simplify the buying process.

1. IBM Marketing Cloud Standard

IBM Marketing Cloud Standard helps marketers to better understand customer behavior and to deliver personalized interactions with higher conversion rates.

- **Marketing Database:** Collect comprehensive customer data in a single source and leverage that data to drive automated campaigns and personalized communications.
- **Segmentation:** Use behavioral, profile, preference data, and more, to query and narrow down your target audience. Optionally, integrate these segmentation queries with your marketing strategies to deliver highly engaging, personalized content to your target audience.
- **Content Builder:** An intuitive, web-based editor enables you to create and edit content in the application, with point-and-click access to features, such as link tracking, personalization, dynamic content, and more.
- **Dynamic Content:** Create messages directly in the message body that are relevant and specific to each customer, using an intuitive point-and-click interface.
- **A/B Testing:** Send test emails to test subject line, from name or content elements; find out which element has the best response, and send the best performing emails to contacts.
- **Email:** Create and send emails with content that is relevant and engaging.
- **Mobile Push:** Deliver personalized messages by combining mobile app data with rich consumer profile information.
- **Social Share:** Share email marketing messages on social networking sites and produce detailed report results.
- **Landing page:** Point-and-click access to create campaign-specific pages and custom web forms.
- **Behavioral Analytics:** Manipulate mailing results to identify trends and target customer segments; define customer segments and select metrics to create cross-tab and table reports, and then manipulate reports by adding or removing fields, changing metrics, and sorting and ordering columns.
- **Campaign Reports:** Create aggregate and detailed reporting information about emails sent to customers. Reporting metrics include opens, conversions, rich media, forwards, and click-stream data access.
- **Email Insights:** Enables users to preview the look and feel of mailings across multiple different email clients, track email client usage across mailing lists helping to optimize email programs based on the specific devices and email clients that customers use. Included in the subscription are 200,000 email opens. An 'email open' is registered each time an email recipient receives an email from Customer and the email recipient opens the email. Included in the subscription are 50 email previews. An 'email preview' is registered each time Customer submits an email template further to this feature for preview. Email Insights includes technology components provided by Litmus. Additionally, if Customer's needs exceed the number of email previews or email opens provided with the package purchased, Customer can expand its entitled quantity by purchasing IBM

Marketing Cloud Additional Email Insights Opens in increments of 100,000 on a per Event basis, as applicable.

- IBM Marketing Cloud Orientation is a foundation, education package for IBM Marketing Cloud. It provides a high-level description of Marketing Cloud features and capabilities, along with an introduction to the Customer Engagement Model. The orientation package is included with an initial subscription to Marketing Cloud, and should be completed prior to starting the required, onboarding service. It is delivered as a self-service offering, and includes video and web-based recordings.

Included in the subscription fees for this IBM SaaS offering are the following:

- a. Five (5) Authorized Users,
- b. Ten (10) active programs.
- c. 250 thousand marketing interactions, which includes both email messages and mobile push messages. If additional marketing interactions are required, Client must purchase entitlements to IBM Marketing Cloud Standard Additional Marketing Interactions in increments of 1,000 on a per Event basis, and
- d. 200 thousand Email Insights opens..

2. IBM Marketing Cloud B2B Standard

IBM Marketing Cloud B2B Standard helps marketers capture, qualify, and nurture leads, in order to better align marketing with sales to grow revenue. This IBM SaaS offering includes the following features:

- All features offered with the IBM Marketing Cloud Standard offering
- Marketing Automation
- Lead nurturing: Create marketing campaigns through a visual campaign builder; send automated messages or drop into a nurture program when a lead routes or performs a certain action.
- Single scoring model: Score customers and prospects based on buying criteria, demographics, and behaviors such as website visits, form submissions, and message interaction, or on time-based components, including recency and frequency. Based on scores, marketing automation features route customers and prospects for appropriate follow-up.
- Progressive Forms: Reduce form abandonment and build a contact's profile, over time, with progressive web forms that show different questions each time a contact visits a website or landing page.
- Digital Behavior Tracking: Monitor how contacts interact with you online by using calculators, live chats, social buttons, and more. Use these custom web tracking event behaviors to move a contact to a marketing program or a behavior scoring model.
- Customer Relationship Management (CRM) Integration: Integration with third-party CRM systems, including Salesforce.com, Microsoft Dynamics CRM, NetSuite, and Sugar CRM.

Included in the subscription fees for this IBM SaaS offering are the following:

- a. Five (5) Authorized Users,
- b. Ten (10) active programs
- c. One (1) scoring model,
- d. 50,000 database records. If additional database records are required, Client must purchase IBM Marketing Cloud B2B Standard Additional Records in increments of 10,000 Database Records,,and
- e. 200 thousand Email Insights opens.

3. IBM Marketing Cloud - Budget and Expense Planning Extension

IBM Marketing Cloud - Budget and Expense Planning is powered by Allocadia, a third party partner of IBM, and offers the following capabilities and can be purchased for use with Marketing Cloud Standard, Marketing B2B Standard, IBM Silverpop Engage, or IBM Campaign. Features include:

- Planning: Create and share plans to align corporate strategy, forecast return on investment and predict revenue impact
- Budgeting: Create and manage global budgets in any currency without cumbersome, disconnected spreadsheets whether global, regional, or product centric

- Performance: Visualize, analyze, and optimize spend; make smarter decisions when connecting plans and budgets to CRM, finance, and marketing data

Included in the subscription fee for this IBM SaaS offering are the following:

- Five (5) Authorized Users.
- One (1) Connector

IBM Marketing Cloud Budget and Expense Planning Additional Users may be purchased if Client requires additional Authorized Users beyond what is provided with the base service. IBM Marketing Cloud Budget and Expense Planning Additional Connector may be purchased if Client requires additional Connectors to be used with the base service.

4. Set-up Service Offerings

- IBM Marketing Cloud Standard Onboarding Services is a combination of provisioning and training that is designed to enable users to configure and utilize offerings in the Marketing Cloud Standard offering. This remotely delivered service is required with an initial subscription to Marketing Cloud. An onboarding consultant is assigned to guide Clients through the onboarding process which is delivered through a series of remote meetings and recorded, web-based learning sessions. Onboarding services include provisioning, configuration and setup, training, and Q & A.
- IBM Marketing Cloud B2B Standard Onboarding Services is a combination of provisioning and training that is designed to enable users to configure and utilize offerings in the Marketing Cloud B2B Standard offering. This remotely delivered service is required with an initial subscription to Marketing Cloud B2B Standard. An onboarding consultant is assigned to guide organizations through the onboarding process, which is delivered through a series of remote meetings and recorded, web-based learning sessions. Onboarding services include provisioning, configuration and setup, training, and Q & A.
- Marketing Cloud - Budget and Expense Planning Onboarding Services is a training service designed to enable users to configure and utilize offerings in the IBM Marketing Cloud - Budget and Expense Planning offering. This remotely delivered service is required with the purchase of the IBM Marketing Cloud - Budget and Expense Planning Additional Users offering. A training consultant is assigned to guide organizations in using enhanced report and dashboard customization through a series of remote meetings and recorded web-based learning sessions. Onboarding services include provisioning, configuration and setup, training and Q & A.

Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS. Customer understands that the SLA does not constitute a warranty.

1. Definitions

- a. “Application Downtime” – means a period of time during which users of the IBM hosted portions of the application interface 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.
- 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 Customer submits to IBM pursuant to the SLA that a Service Level has not been met during a Contracted Month.
- d. “Contracted Month” means each full month during the term 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. “Data Processing Downtime” – means a period of time during which the Service is unable to collect data via the data processing elements of the Service.
- f. “Downtime” means Application Downtime and/or Data Processing Downtime. Additionally, Downtime includes a period of time during which the IBM SaaS is unable to send or receive data via the data processing elements of the IBM SaaS. Downtime does not include the period of time when the IBM SaaS is not available because of:
 - (1) a scheduled or announced maintenance outage;
 - (2) Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, internet service provider or telecommunication carriers actions or inactions, etc.);
 - (3) problems with Customer’s applications, equipment or data, or a third party’s applications, equipment or data;
 - (4) Customer’s failure to adhere to required system configurations and supported platforms for accessing the Service; or
 - (5) IBM’s compliance with any designs, specifications, or instructions that Customer provides to IBM or a third party provides to IBM 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. “Service” means the IBM SaaS to which this SLA applies.
- i. “Service Level” means the standard set forth below by which IBM measures the level of service it provides in this SLA.

2. Availability Credits

- a. To submit a Claim, Customer must log a Severity 1 support ticket (as defined below in the Technical Support section) for each Event with the IBM technical support help desk, within twenty-four (24) hours of first becoming aware that the Event has impacted Customer’s use of the Service. Customer must provide all necessary information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event.
- b. Customer must submit a Claim for an Availability Credit no later than three (3) business days after the end of the Contracted Month in which the Claim arose.
- c. Availability Credits are based on the duration of the Downtime measured from the time Customer reports that it was first impacted by the Downtime. If Customer reports an Event of Application Downtime and an Event of Data Processing Downtime occurring simultaneously, then IBM will treat

the overlapping periods of Downtime as a single period of Downtime, and not as two separate periods of Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved Service Level during each Contracted Month, as shown in the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.

- d. The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed 20 percent (20%) of one twelfth (1/12th) of the annual charge paid by Customer to IBM for the Service.

3. Service Levels

Availability of the IBM SaaS during a Contracted Month

Availability during a Contracted Month	Availability Credit (% of Monthly Subscription Fee for Contracted Month that is the subject of a Claim)
99% - 99.949%	2%
98% - 98.999%	5%
97% - 97.999%	10%
Less than 97.000%	20%

Availability, expressed as a 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.

Example: 50 minutes total Downtime during Contracted Month

$\frac{43,200 \text{ total minutes in a 30 day Contracted Month} - 50 \text{ minutes Downtime}}{43,200 \text{ total minutes in a 30 day Contracted Month}} = 99.884\%$	2% Availability Credit for 99.884% Achieved Service Level
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4. Other information about this SLA

This SLA is made available only to IBM's Customers and does not apply to claims made by users, guests, participants and permitted invitees of the Service or to any beta or trial services that IBM provides. The SLA only applies to the Services that are in production use. It does not apply to non-production environments, including but not limited to test, disaster recovery, quality assurance, or development.