



## IBM Terms of Use – SaaS Specific Offering Terms

### IBM Social Merchandising for Consumer Products

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/](http://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, 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 Social Merchandising for Consumer Products
- IBM Social Merchandising for Consumer Products for Other Online Sources
- IBM Social Merchandising for Consumer Products Twitter

#### 2. Charge Metrics

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

- a. Authorized User is a unit of measure by which the Program can be licensed. An Authorized User is a unique person who is given access to the Program. The Program may be installed on any number of computers or servers and each Authorized User may have simultaneous access to any number of instances of the Program at one time. Licensee must obtain separate, dedicated entitlements for each Authorized User given access to the Program in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. An entitlement for an Authorized User is unique to that Authorized User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Authorized User entitlement to another person.
- b. 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
- c. 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 Client's Proof of Entitlement (PoE) or Transaction Document.

Document entitlements are sold in increments of 250,000.

#### 3. Charges and Billing

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

##### 3.1 Set-Up

Set-up charges will be specified in a Transaction Document.

##### 3.2 Partial Month Charges

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

#### 4. 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:

#### **4.1 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.

#### **4.2 Continuous Billing**

When the PoE states that Client's renewal is continuous, Client will continue to have access to the IBM SaaS and will be billed for the usage of the IBM SaaS on a continuous basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Client will need to provide IBM or its IBM Business Partner with ninety (90) days written notice requesting that Client's IBM SaaS be cancelled. Upon cancellation of Client's access, Client will be billed for any outstanding access charges through the month in which the cancellation took effect.

#### **4.3 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.

### **5. Technical Support**

During the Subscription Period, technical support is provided for the duration of this IBM SaaS as set forth in the SaaS Support handbook at <http://www.ibm.com/software/support/handbook.html> or a subsequent URL provided by IBM. Technical support is included with the IBM SaaS and is not available as a separate offering.

### **6. IBM SaaS Offering Additional Terms**

#### **6.1 Cookies**

Client is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect personal information from Client (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 Client. Client 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 Client's employees and contractors to access, update, correct or delete their collected personal information.

#### **6.2 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

#### **6.3 Use Limitations - Documents**

- All Document entitlements must be used within 1 year of date of purchase.
- Clients do not have a right to a refund for any Documents purchased and not used prior to termination of the IBM SaaS

#### **6.4 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>.

#### **6.5 Supplemental Definitions**

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

- b. "Analysis Reports" means the results or output from the process of analyzing and deriving information from the Content.
- c. "Content" means information, software, and data, including, without limitation, any personal data, hypertext, markup language, files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Client and any user authorized by Client. Content also includes information or data, in whole or in part, provided by or for Client, or accessed on Client's behalf by IBM or its suppliers, from Third Party Sites.
- d. "Third Party Applications" means applications and software provided by individuals or entities other than IBM that interoperate with the IBM SaaS.
- e. "Third Party Sites" refers to third party websites, including but not limited to, Client's websites and those that include social media content, such as Facebook, Klout, and Twitter.
- f. "Tweet ID" a unique identification number generated for each Tweet.
- g. "Tweets" means a public posting with a text body of no more than 140 characters made by any end user of the Twitter service.
- h. "Twitter Content" means Tweets, Tweet IDs, public Twitter end user profile information, and any other Twitter data and information made available to Client.
- i. "Twitter Marks"– The Twitter name, or logos that IBM makes available to Client, Client's use of the Twitter Marks is subject to this Agreement and the Twitter Brand Assets and Guidelines located at <https://Twitter.com/logo>.

## 6.6 Internal Use Only

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 Client's internal use only

## 6.7 Access and Use of Content, Third Party Applications, and Third Party Sites

IBM SaaS provides a means for Client to select and access Content from Third Party Applications and Third Party Sites for Client's use solely within 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, Client shall provide IBM necessary authorizations and access to Content, Third Party Applications, and Third Party Sites to operate IBM SaaS on Client's behalf. Client 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. Client agrees to comply with the terms of such separate agreements.

When using Content that Client accesses as part of this IBM SaaS, Client is strictly allowed to: (a) conduct analysis of the Content and produce Analysis Reports as permitted by the IBM SaaS functionality; and (b) display the Content solely within the IBM SaaS.

When Client displays Twitter Content, then Client must display the Twitter Content in accordance with the Twitter display requirements located at <https://dev.Twitter.com/terms/display-requirements>.

When using the Twitter Content accesses as part of this SaaS, Client is strictly allowed to display Twitter Marks, solely to attribute Twitter as the source of the Twitter Content, as set forth herein.

## 6.8 Restrictions

In addition to conditions of use regarding IBM SaaS specified in the Agreement, Client 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 privacy laws or any other laws, the terms of any third party licenses, agreements, or any 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.

- d. Aggregate, cache, or store location data or geographic information contained in the Content separately from the Content with which it is associated, or use the location data or geographic data included in the Content for any reason except to identify the location tagged in a Tweet.
- e. Comingle the Content with other data, unless the Content will always be clearly attributable to the source, e.g., a Tweet should not be commingled unless it is clearly attributable to Twitter.
- f. Use Content made accessible as part of the IBM SaaS to perform analysis on a small group of individuals or a single individual for any unlawful or discriminatory purpose.
- g. Provide visualization, filtering or curation of Content for purpose of consumer-facing public display of Content, including without limitation any display of Content for mass market media and entertainment events, online widget integrations or visualizations, television broadcast, outdoor 'e-billboard' or other such medium.
- h. Use the Content or analysis therefrom in the IBM SaaS as part of an advertising network, unless expressly authorized in writing by the Third Party Site or Third Party Application associated with the Content.
- i. Use the Twitter Content or analysis therefrom in the IBM SaaS for the purpose of creating an application that performs a regularly-produced, time-based series of measurements made using the same, or similar, methodologies for the purpose of comparing television program performance over time, or against a defined set or subset of other television programs.
- j. Use any aggregate user metrics, such as number of Twitter users or accounts, obtained while accessing and using the Content as part of the IBM SaaS for any purpose, unless expressly authorized in writing by the Third Party Site or Third Party Application associated with the Content.
- k. Use the Content for any other purpose except for the limited purpose allowed for under this Agreement.

## **6.9 Termination based on Third Party Actions**

### **6.9.1 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, Clients, 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 Client to any refund, credit, or other compensation.

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

### **6.9.2 Termination by Client**

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 Client demonstrates that such unavailability significantly and permanently impairs the Client's ability to use IBM SaaS, then Client may notify IBM of Client'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 Client any prepaid fees covering the remainder of the term of the terminated subscriptions subsequent to the effective date of termination.

Client 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, Client 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.

## **6.10 Access and Storage**

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

## **6.11 Usage Limits**

Client'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 Client 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 Client to monitor usage. If a Client exceeds usage limits, IBM may at its discretion, work with Client to reduce the usage so that it complies with usage limits. If Client exceeds applicable usage limits, IBM may require Client to execute a Proof of Entitlement or Transaction Document for additional IBM SaaS and/or invoice Client for excess usage. In such instances, Client agrees to execute any required additional Proof of Entitlement or Transaction Documents and/or pay additional invoices.

## **6.12 Prohibited Uses**

The following uses are prohibited by Red Hat:

**No High Risk Use:** Client 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 noncontrolling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

## **6.13 Sample Materials**

IBM SaaS may include some components or other materials identified as Sample Materials. Client may copy and modify Sample Materials for internal use only provided such use is within the limits of the license rights under this Agreement, provided however that Client may not alter or delete any copyright information or notices contained in the Sample Materials. IBM provides the Sample Materials without obligation of support and "AS IS", WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF TITLE, NON-INFRINGEMENT OR NON-INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **6.14 Warranty and Indemnification Disclaimer for Content**

NOTWITHSTANDING THE WARRANTY SET FORTH IN THE AGREEMENT, THE CONTENT IS PROVIDED SOLELY "AS IS", "AS AVAILABLE" WITH ALL FAULTS, AND CLIENT'S USE OF THE CONTENT IS AT ITS SOLE RISK. IBM DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE, IN CONNECTION WITH THE CONTENT. IBM DOES NOT WARRANT THAT THE ACCESS TO THE CONTENT WILL BE UNINTERRUPTED, OR ERROR-FREE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CLIENT MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS SUCH LAW PROVIDES OTHERWISE). ANY OBLIGATION FOR IBM TO INDEMNIFY CLIENT UNDER THE AGREEMENT DOES NOT APPLY IN ANY WAY TO CLIENT'S ACCESS AND USE OF THE CONTENT.

## **6.15 Twitter Terms for United States Government Use**

The Twitter Content is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Any use, modification, derivative, reproduction, release, performance, display, disclosure or distribution of the Twitter Content by any government entity is prohibited, except as expressly permitted by the terms of this TOU. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. If Client uses the

Twitter Content in Client's official capacity as an employee or representative of a U.S., state or local government entity and Client is legally unable to accept the jurisdiction, venue or other clauses herein, then those clauses do not apply to such entity, but only to the extent as required by applicable law. Contractor/manufacturer is Twitter, Inc. 1355 Market Street, Suite 900, San Francisco, California 94103.

### Appendix A

**1. IBM Social Merchandising for Consumer Products**

IBM Social Merchandising is a cloud-based solution that provides insight into social data sources for Consumer Products Goods (CPG) manufacturers. Metrics such as sentiment and trend are presented for Content of the offering.

**2. IBM Social Merchandising for Consumer Products for Other Online Sources**

IBM Social Merchandising for Consumer Products for Other Online Sources Offering accesses Documents for which the source is social data other than Twitter Content.

**3. IBM Social Merchandising for Consumer Products Twitter**

IBM Social Merchandising for Consumer Products Twitter Offering accesses Documents for which the source is Twitter social Content. IBM Social Merchandising for Consumer Products Client Owned

**4. IBM Social Merchandising for Consumer Products Set-Up**

This set-up is a one-time requirement necessary to populate the solution with the required attributes.

## Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS and is applicable if specified in Client’s Proof of Entitlement (PoE) or Transaction Document:

The version of this SLA that is current at the commencement or renewal of the term of Client’s subscription will apply. Client understands that the SLA does not constitute a warranty.

### 1. Definitions

- a. "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 IBM SaaS.
- b. "Claim" means a claim Client submits to IBM that an SLA has not been met during a Contracted Month.
- c. "Contracted Month" means each full month during the term of the IBM SaaS 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.
- d. "Downtime" means a period of time during which production system processing for the IBM SaaS has stopped and Client’s users are unable to use all aspects of the IBM SaaS for which they have permissions. Downtime does not include the period of time when the IBM SaaS is not available because of:
  - A scheduled or announced maintenance outage;
  - Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, etc.);
  - Problems with Client’s or a third party’s applications, equipment, or data;
  - Client’s failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS; or
  - IBM’s compliance with any designs, specifications, or instructions provided to IBM by Client or a third party on Client’s behalf.
- e. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet an SLA.

### 2. Availability Credits

- a. To submit a Claim, Client must log a Severity 1 support ticket for each Event with the IBM technical support help desk, within 24 hours of Client first becoming aware that the Event has impacted Client’s use of the IBM SaaS.. Client must provide all necessary information about the Event and reasonably assist IBM with the diagnosis and resolution of the Event.
- b. Client must submit the 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 Client reports that Client was first impacted by the Downtime. For each valid Claim, IBM will apply the highest applicable Availability Credit based on the achieved SLA 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. If Client purchased the IBM SaaS from a valid IBM reseller in a remarketing transaction in which IBM maintains primary responsibility for fulfilling the IBM SaaS and SLA commitments, the Availability Credit will be based on the then-current Relationship Suggested Value Price (RSVP) for the IBM SaaS in effect for the Contracted Month which is the subject of a Claim, discounted at a rate of 50%.



- e. The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed ten percent (10%) of one twelfth (1/12th) of the annual charge paid by Client to IBM for the IBM SaaS.

### 3. Service Levels

Availability of the IBM SaaS during a Contracted Month is as follows:

Availability 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%	10%

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: 500 minutes total Downtime during Contracted Month

43,200 total minutes in a 30 day Contracted Month -- 500 minutes Downtime = 42,700 minutes <hr style="width: 50%; margin: 0 auto;"/> 43,200 total minutes	= 2% Availability Credit for 98.8% Achieved Service Level
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### 4. Exclusions

This SLA is made available only to IBM Clients. This SLA does not apply to the following:

- Beta and trial services.
- Non-production environments, including but not limited to, test, disaster recovery, quality assurance, or development.
- Claims made by Client's users, guests, participants and permitted invitees of the IBM SaaS.