



IBM Terms of Use – SaaS Specific Offering Terms

IBM Social Media Analytics for Solutions

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, 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 Media Analytics for Solutions

2. Charge Metrics

The IBM SaaS is sold under the following charge metric as specified in the Transaction Document:

- a. 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 Partial Month Charges

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

3.2 Overage Charges

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

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 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**" 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.

"**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.

6.2 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 Client's internal use only, and may not be used to provide services to third parties. Client may not sublicense, rent, lease, or otherwise make the reports, results, or other output obtained from IBM SaaS available to third parties.

6.3 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 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, 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.

6.4 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 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.

6.5 Termination based on Third Party Actions

6.5.1 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, 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.

6.5.2 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.

6.6 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.

6.7 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 user documentation or in the online IBM SaaS. The IBM SaaS may provide on demand information that enables 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.

6.8 Privacy

Client 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>.

6.9 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>.

6.10 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.

6.11 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.

Appendix A

1. **IBM Social Media Analytics (SaaS)**

IBM Social Media Analytics (SaaS) is an online service that allows Client 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. Client is responsible for results obtained from the use of the IBM SaaS