



# IBM Terms of Use – SaaS Specific Offering Terms

## IBM AdTarget

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 offering is covered by these SaaS Specific Offering Terms acquired under the IBM International Passport Advantage Agreement or the IBM International Passport Advantage Express Agreement:

- IBM AdTarget

The following IBM SaaS offering is covered by these SaaS Specific Offering Terms acquired under the IBM International Agreement for Selected IBM SaaS Offerings.

- IBM Coremetrics AdTarget

#### 2. Charge Metrics

The IBM SaaS is sold under the following charge metric(s):

- Million Server Calls (MSCs) is a unit of measure by which the IBM SaaS can be obtained. A Server Call is data passed to and processed by IBM SaaS as a result of a tagged event, initiated by a tracked visitor for one Entity ID. A Server Call processed by different Entity IDs will be counted as a unique Server Call for each unique Entity ID. An Entity ID separates and/or controls access rights to data in the IBM SaaS which may encompass processed data from one or more Customer web sites. Each MSC entitlement represents one Million Server Calls. Sufficient Million Server Call entitlements must be obtained to cover the number of Server Calls processed during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
- 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:

- Entire commitment amount upfront
- Monthly (in arrears)
- Quarterly (upfront)
- Annually (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 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 and included in the first invoice. 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 in any quarter (based on a calendar year beginning January 1) exceeds three (3) times the entitlement specified in a PoE or Transaction Document, then Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document. If Customer is provisioned within a given quarter, overage will be prorated accordingly.

### **3.4 Remote Services (Human Based)**

Remote Services are purchased on a per Engagement charge metric and are billed when ordered.

## **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 for that account.

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. Remote Services**

### **5.1 IBM AdTarget Premium Onboarding Services / IBM Coremetrics AdTarget Premium Onboarding Services**

Provides up to 10 hours of remote consulting, best practices, training and configuration for onboarding Customers to the IBM SaaS. Services are purchased per Client ID and expire 90 days from date Customer is notified by IBM that their access to the IBM SaaS is available, regardless of whether all hours have been used.

## **6. Renewal of a Subscription Period**

### **6.1 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.

### **6.2 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.

### **6.3 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.

## **7. 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.

Technical Support information can be found at the following URL: <http://www.ibm.com/support>.

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

### **8.1 Links to Third Party Websites or Other Services**

If Customer or an IBM SaaS User transmits Content to a third party website or other service that is linked to or made accessible by the IBM SaaS, Customer and the IBM User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Customer and the third party website or service. IBM makes no warranties or representations about such third party sites or services, and shall have no liability for such third party sites or services.

### **8.2 Safe Harbor Certification**

IBM abides by the U.S. – EU Safe Harbor Framework as set forth by the United States Department of Commerce regarding the collection, use and retention of information collected from the European Union. For more information about Safe Harbor or to access IBM's certification statement, go to <http://www.export.gov/safeharbor/>.

### **8.3 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>.

### **8.4 Service Level Agreement**

If Customer's PoE designates an applicable Service Level Agreement ("SLA"), the IBM SaaS is delivered subject to the SLA attached to this TOU as Appendix B and the remedies stated in that SLA. The SLA is Customer's sole and exclusive remedy with respect to the service level commitments defined therein.

## IBM Terms of Use

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### 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

###### 6.1 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

###### 6.1 Automatic Renewal of a Subscription Period

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

##### BRAZIL

###### 6.1 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

###### 6.1 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 6.1 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**

#### **6.1 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 6.1 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**

#### **6.1 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 6.1 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

IBM AdTarget / IBM Coremetrics AdTarget is a solution that allows Customers to select and syndicate specific site visitor activities and segment identifier information to IBM certified display advertising partners. The data made available for syndication within AdTarget is derived directly from the tagged events the Customer specified for data collection within their use of IBM Digital Analytics / IBM Coremetrics Web Analytics. The visitor activity and segment data that is sent to a Customer's partner(s) of choice are subsequently used by those vendors to serve relevant advertisements to visitors after they have left the Customer's site.

AdTarget supports active syndication of supported IBM Digital Analytics / IBM Coremetrics Web Analytics data and visitor segment identifiers to up to three (3) IBM certified display advertising partners simultaneously. Customers manage their level of partner data syndication directly within the AdTarget user interface.

AdTarget supports syndication of data elements associated with Page View, Product View, Shop Action, Order, Search, and Conversion Event activities according to the Customer's implementation of Digital Analytics / IBM Coremetrics Web Analytics tags.

## Appendix B

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

- IBM AdTarget / IBM Coremetrics AdTarget

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.

### 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. "Authorized Contact" means the individual you have specified to IBM who is authorized to submit Claims under this SLA.
- c. "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.
- d. "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.
- e. "Contracted Month" means each full month during the term of the Service measured from 12:00 a.m. GMT on the first day of the month through 11:59 p.m. GMT on the last day of the month.
- f. "Customer" or "you" or "your" means an entity that is subscribing for the Service directly from IBM, and that is not in default of any material obligations, including payment obligations, under its contract with IBM for the Service.
- g. "Downtime" means Application Downtime and/or Inbound Processing Downtime applicable to the corresponding Service Level shown on the table below. 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.
- h. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- i. "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.
- j. "Inbound Data Collection Downtime", if applicable, means a period of time during which the Service is unable to collect inbound data via the inbound data processing elements of the Service.
- k. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.
- l. "Service" means the Service to which this SLA applies, as shown on the first page of this SLA.

m. "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 that 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 applicable to the corresponding Service Level shown on the table below. 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. If Customer reports an Event of Application Downtime and an Event of Inbound 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 on the tables below. IBM will not be liable for multiple Availability Credits for the same Event(s) in the same Contracted Month.

For Bundled Service (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 twenty percent (20%) 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

Service	Applicable Service Level	
	Application availability during a Contracted Month	Inbound Data Collection availability during a Contracted Month
IBM AdTarget / IBM Coremetrics AdTarget	Y	N



Achieved Service Level during a Contracted Month	Availability Credit (% of Monthly Subscription Fee for Contracted Month which is the subject of a Claim)
99% – 99.949%	2%
98% – 98.999%	5%
97% – 97.999%	12%
Less than 97.000%	20%

"Achieved Service Level" 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, with the resulting fraction expressed as a percentage.

Example: 50 minutes total Downtime during Contracted Month

43,200 total minutes in a 30 day Contracted Month - 50 minutes Downtime = 43,150 minutes <hr style="width: 50%; margin: 0 auto;"/> 43,200 total minutes in a 30 day Contracted Month	= 2% Availability Credit for 99.884% Achieved Service Level
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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.