

## IBM Coremetrics Search Marketing

The terms of this IBM Terms of Use are in addition to those of the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement as applicable ("Agreement"). Carefully read these IBM SaaS Terms of Use ("Terms of Use" or "ToU") before using the IBM SaaS and any associated Enabling Software. Customer may use the IBM SaaS and Enabling Software only if Customer first accepts these Terms of Use. By ordering, accessing or using the IBM SaaS or Enabling Software or clicking on an "Accept" button, Customer agrees to these Terms of Use.

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

### Part 1 – General Terms

#### 1. Purpose

These IBM SaaS Terms of Use ("Terms of Use") are for the following IBM SaaS:

- IBM Coremetrics Search Marketing

For the purpose of this ToU only, the term "IBM SaaS" refers to the specific IBM SaaS offering set forth in this Section 1.

Customer may use the IBM SaaS only during a valid Subscription Period.

#### 2. Definitions

Capitalized terms not defined in these Terms of Use are defined in the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable.

Privacy Practice – the Privacy Practice, located on the Internet at <http://www.ibm.com/privacy>, and any subsequent modification.

Enabling Software – any Program and associated materials provided to Customer by IBM or a third party as part of the IBM SaaS offering in order to facilitate access to and use of IBM SaaS.

#### 3. General Charge Terms

##### 3.1 Metrics

Thousand USD Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand USD Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand United States Dollars (USD) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total USD Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand EUR Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand EUR Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand Euros as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total Euro Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand GBP Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand GBP Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand United Kingdom Pound Sterling (GBP) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total GBP Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Hundred Thousand YEN Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Hundred Thousand YEN Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Hundred Thousand Japanese YEN as tracked by the IBM SaaS. Sufficient

entitlements must be obtained to cover the total YEN Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand CAD Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand CAD Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand Canadian Dollars (CAD) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total CAD Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand AUD Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand AUD Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand Australian Dollars (AUD) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total AUD Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand SGD Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand SGD Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand Singaporean Dollars (SGD) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total SGD Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Thousand BRL Marketing Spend is a unit of measure by which the IBM SaaS can be obtained. Thousand BRL Marketing Spend is the amount of monetary spend by Customer on marketing initiatives expressed in Thousand Brazilian Real (BRL) as tracked by the IBM SaaS. Sufficient entitlements must be obtained to cover the total BRL Marketing Spend during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

For the IBM SaaS, Marketing Spend represents monetary spend by Customer on marketing initiatives specific to search marketing.

Engagement is a unit of measure by which the services can be obtained. An Engagement consists of professional and/or training services including but not limited to a training event, business analysis, or a deliverable-based services event. Sufficient entitlements must be obtained to cover each Engagement.

## **3.2 Charges & Billing**

### **3.2.1 Billing Options**

The Subscription Period for this IBM SaaS offering is available to be ordered for up to 60 months.

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

- a. Entire commitment amount upfront
- b. Monthly (in arrears)
- c. Quarterly (upfront)
- d. 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.

### **3.2.2 Partial Month Charges**

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by IBM that their access to the IBM SaaS is available.

### **3.2.3 Overage Charges**

If Customer's actual usage of the IBM SaaS exceeds 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.

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

The rate and billing term for additional remote services will be specified in a Transaction Document and billed accordingly.

## **4. Account Creation and Access**

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

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

## **5. Trade-Ups**

Certain IBM SaaS offerings may be acquired for a reduced charge to replace qualifying IBM SaaS offerings. Customer agrees that IBM will terminate Customer's use of the replaced IBM SaaS offering when Customer is provided access to the replacement IBM SaaS offering.

## **6. 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.

Enabling Software are programs and any associated materials provided to Customer by IBM as part of the Services in order to facilitate access to and use of the Services. The Enabling Software is owned by IBM and is copyrighted and licensed, not sold. IBM grants Customer a nonexclusive license to use the Enabling Software for the purpose specified in this Agreement and install on Customer's system to support such use, provided that Customer: (i) complies with the terms of this Agreement, (ii) ensures that anyone who uses the Enabling Software (accessed either locally or remotely) (1) does so only on Customer's behalf and (2) complies with the terms of this Agreement, (iii) does not (1) use, install, copy, modify, or distribute the Enabling Software except as expressly permitted in this Agreement and (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Enabling Software, (iv) does not use any of the Enabling Software's components, files, modules, audio-visual content, or related licensed materials separately from that Enabling Software; and (v) does not sublicense, rent, or lease the Enabling Software.

## **7. Remote Services (Human Based)**

### **7.1 IBM Coremetrics Search Marketing Premium Onboarding Services**

Provides up to 10 hours of remote consulting, best practices, training and configuration for onboarding Customers to IBM Coremetrics Search Marketing. Services are purchased per Client ID and expire 90 days from purchase regardless of whether all hours have been used.

### **7.2 IBM Coremetrics Pay Per Click (PPC) Workshop**

This workshop, which includes up to 91 hours, will provide guidance and consulting for customers to better utilize analytics to track, optimize and manage PPC Search marketing through reports. Services are purchased per Client ID and expire 90 days from purchase regardless of whether all hours have been used.

## **8. Suspension of IBM SaaS and Termination**

### **8.1 Suspension**

#### **8.1.1 Suspension of User Account**

In the event of a breach of the Terms of Use, Agreement, or Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the offending IBM SaaS User's Content, at any time. IBM will notify Customer of any suspension or revocation action.

### **8.1.2 Suspension of Customer Account**

If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, IBM reserves the right to suspend the IBM SaaS provided to Customer, without liability to Customer, until such amounts are paid in full; provided, however, that no suspension will take effect unless IBM has given Customer at least 10 business days prior written notice that its account is overdue.

## **8.2 Termination**

IBM may terminate Customer's access to IBM SaaS for cause if Customer does not comply with the terms of the Agreement or this ToU and such noncompliance is not remedied within a reasonable time after receiving written notice from IBM. Upon termination, Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within their possession or control.

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

### **9.1 Automatic Renewal of a Subscription Period**

The terms of the first two paragraphs of Section 3.5.4 of the Agreement: Annual Renewal of Software Subscription and Support and Selected Support, including any applicable Country-unique terms, apply to this IBM SaaS offering except that for purposes of these Terms of Use:

- a. the words "software subscription and support" or "Selected Support" are replaced by the words "IBM SaaS Subscription Period"; and
- b. to prevent an automatic renewal of the IBM SaaS Subscription Period, Customer must provide IBM with ninety (90) days written notice of cancellation prior to the end of the applicable Subscription Period.

## **10. Emergency Maintenance & Scheduled Maintenance**

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur.

IBM SaaS will not be available during these times.

## **11. Updates; Applicable Terms and Authorization for Auto Updates**

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates. Customer authorizes IBM to, and agrees that IBM may, in accordance with IBM's standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to IBM SaaS without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

## **12. Updates to Terms of Use**

IBM reserves the right to modify these Terms of Use, only with respect to prospective use of IBM SaaS, at any time, by providing notice of such modified terms to Customer. Customer's continued use of IBM SaaS constitutes Customer's acceptance to be bound by any such modified Terms of Use.

## **13. 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-01.ibm.com/software/data/support/coremetrics\\_support\\_comm.html](http://www-01.ibm.com/software/data/support/coremetrics_support_comm.html).

## **14. Data Privacy and Data Security**

### **14.1 Customer's Obligations**

In relation to all Personal Data provided by or through Customer to IBM, Customer will be responsible as the sole data controller for complying with all applicable data protection or similar laws such as, but not limited to, EU Directive 95/46/EC (and laws implementing that Directive) that regulate the processing of

Personal Data including special categories of data, as such terms are defined in that Directive (and laws implementing that Directive).

Customer agrees to obtain all legally required consents, authorizations and approvals and make all necessary disclosures before (i) including any Personal Data in Content and (ii) using the Enabling Software and IBM SaaS.

Customer confirms and acknowledges that it (i) is solely responsible for any Personal Data that may be contained in Content, including any information which any IBM SaaS User shares with third parties on Customer's behalf; and (ii) has determined that the security measures set forth in these ToU provide an appropriate level of protection for any Personal Data.

Customer is solely responsible for determining the purposes and means of processing any Personal Data by IBM under these Terms of Use, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws.

## **14.2 IBM's Obligations**

IBM will only process Personal Data in a manner that is reasonably necessary to provide IBM SaaS, and only for that purpose.

IBM will only process Personal Data in delivering IBM SaaS as described by IBM, and Customer agrees that the description provided by IBM is consistent with Customer's processing instructions.

IBM will use reasonable endeavors to apply the security measures set forth in these ToU, and on termination or expiry of either this TOU or the Agreement, IBM will destroy or return to Customer all Personal Data.

If Customer or a Customer data controller is required by applicable data protection laws to provide information about or access to Personal Data to any individual or to a relevant authority, IBM will reasonably cooperate with Customer in providing such information or access.

## **14.3 International Transfers**

Customer agrees that when IBM reasonably determines it to be useful in its provision of IBM SaaS, IBM may transfer Content, including any Personal Data, across a country border to the entities and countries notified to Customer. Such transfer may be made to a country outside the European Economic Area, or to a country that has not been declared by the European Commission to provide an adequate level of data protection. Customer consents to IBM SaaS being provided by such entities in such countries, and is solely responsible for determining that any transfer of any Personal Data across a country border under the terms of the Terms of Use complies with applicable data protection laws. IBM shall reasonably cooperate with Customer, for Customer's own benefit or for the benefit of a Customer data controller, in its fulfillment of any legal requirement, including obtaining mandatory approvals.

## **14.4 Data Security**

IBM will take commercially reasonable steps in accordance with its established practices, as revised from time to time, to implement:

- controls designed to limit unauthorized access to facilities at which Content is stored and processed;
- mechanisms designed to protect the integrity of equipment on which Content is stored and processed;
- security review activities designed to identify and remediate security vulnerabilities in systems, networks, operating systems and applications;
- network, web and email traffic controls designed to limit unauthenticated access and help defend against known and predicted vulnerabilities; and
- problem management and change management controls and logging of administrative task on devices.

## **15. Compliance with Applicable Export Law**

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Customer acknowledges that IBM may use global

resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS. Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

## **16. Indemnity**

Customer agrees to indemnify, defend and hold IBM harmless against any third party claim arising out of or relating to: 1) violation of the Acceptable Use policy by Customer or any IBM SaaS User; or 2) Content created within IBM SaaS or provided, uploaded, or transferred to IBM SaaS by Customer or any IBM SaaS User.

## **17. 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>.

## **18. Warranty and Exclusions**

### **18.1 No Warranty**

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE IBM SaaS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

## **19. IBM SaaS Offering Unique Terms**

In connection with Customer's use of the IBM SaaS, Customer acknowledges and agrees that: (i) IBM SaaS User names, titles, company names and photographs may be posted by an IBM SaaS User as part of a profile ("Profile") and that the Profile can be viewed by other IBM SaaS Users, and (ii) at any time Customer may request that an IBM SaaS User Profile be corrected or removed from the IBM SaaS and such Profile will be corrected or removed, but removal may prevent access to the IBM SaaS.

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.

## **20. General**

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.

## **21. Entire Agreement**

The complete agreement between the parties, replacing any prior oral or written communications between Customer and IBM, consists of these Terms of Use and the Agreement. If there is a conflict among the terms of these Terms of Use and the Agreement, then these Terms of Use prevail over the Agreement.

Additional or different terms in any written communication from Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as set forth herein.

## 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:

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

### ASIA PACIFIC COUNTRY AMENDMENTS

#### AUSTRALIA

##### 18. Warranty and Exclusions

*The following is added to the end of Section 18:*

Although IBM specifies that there are no warranties, Customer may have certain rights under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### NEW ZEALAND

##### 18. Warranty and Exclusions

*The following is added to the end of Section 18:*

Although IBM specifies that there are no warranties, Customer may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Customer requires the goods for the purposes of a business as defined in that Act.

### EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

#### EUROPEAN UNION MEMBER STATES

*The following is added to Section 18: Warranty and Exclusions:*

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 18: Warranty and Exclusions.

#### AUSTRIA

##### 18. Warranty and Exclusions

*If you paid a charge for the IBM SaaS then the Section 18 Warranty and Exclusions is replaced in its entirety by the following:*

##### 18. Warranties and Exclusions

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("*Ausschluß der Gewährleistung*").

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

#### GERMANY

##### 18. Warranty and Exclusions

*If you paid a charge for the IBM SaaS then the Section 18 Warranty and Exclusions is replaced in its entirety by the following:*

## **18. Warranties and Exclusions**

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS announcement and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("*Ausschluß der Gewährleistung*").

Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

## **IRELAND**

### **18. Warranty and Exclusions**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

## **IRELAND AND UNITED KINGDOM**

### **21. Entire Agreement**

*The following sentence is added at the beginning of this Section 21:*

Nothing in the following paragraphs shall have the effect of excluding or limiting liability for fraud.