

IBM Silverpop Engage SMS

This Service Description describes the Cloud Service IBM provides to Client. Client means the company and its authorized users and recipients of the Cloud Service. The applicable Quotation and Proof of Entitlement (PoE) are provided as separate Transaction Documents.

1. Cloud Service

IBM Silverpop Engage SMS is a cloud-based text messaging capability within the Silverpop Engage digital marketing platform and provides the following capabilities:

- Ability to send SMS messages to Mobile Messaging Devices (meaning wireless devices capable of sending, receiving, or displaying content sent through SMS) in any country around the world where SMS is supported.
- SMS campaign builder provides marketers with easy-to-use frameworks and templates for building customer SMS interactions.
- Drag and drop SMS campaigns using predefined templates for Text to Join, Text for Info, Text to Vote, Text to Screen, or Text to Win
- Campaign-level reporting to view aggregate SMS campaign data and individual campaign level data
- Ability to send SMS messages from third party systems by leveraging the Silverpop SMS Gateway API
- Use the Silverpop Query Builder to identify or filter users who performed one or more of these SMS events: Interacted with an SMS program, Been Sent a Message from SMS Program, and Interacted with a Multi-Step Program.

1.1 IBM Silverpop SMS International Long Code (Group ILCL-A)

This Cloud Service provides the Client with a standard, 10-digit telephone number owned by IBM Silverpop and used by multiple IBM Silverpop Clients for sending to and/or receiving text messages from Mobile Messaging Devices to an entitled country.

1.2 IBM Silverpop SMS National Long Code (Group NLCL-A)

This Cloud Service provides the Client with a standard, 10-digit telephone number used exclusively by the Client for sending to and/or receiving text messages from Mobile Messaging Devices to an entitled country.

1.3 IBM Silverpop SMS Shared Short Code (Group SSCL-A)

This Cloud Service provides the Client with a special, shortened telephone number owned by IBM Silverpop and used by multiple IBM Silverpop Clients for sending to and/or receiving text messages from Mobile Messaging Devices to an entitled country.

1.4 IBM Silverpop SMS Dedicated Short Code (Group DSCL-X*)

This Cloud Service provides the Client with a special, shortened telephone number used exclusively by the Client for sending to and/or receiving text messages from Mobile Messaging Devices to an entitled country.

1.5 IBM Silverpop SMS National Long Code Message Volume (Group NLCMV-#*), IBM Silverpop SMS Shared Short Code Message Volume (Group SSCMV-#*), IBM Silverpop SMS Dedicated Short Code Message Volume (Group DSCMV-#*), and IBM Silverpop SMS International Long Code Message Volume (Group ILCMV-#*)

These Cloud Service offerings are standard rate text messages sent through IBM Silverpop Engage SMS which are then handed off to a wireless operator for attempted delivery to a Mobile Messaging Device or that originate from a Mobile Messaging Device through a wireless operator and are received into the Silverpop Engage SMS application. Any SMS messages consisting of more than one hundred sixty (160) characters will be automatically be split into multiple messages of one hundred sixty (160) characters or less by IBM Silverpop and Client will be billed for each message.

Offering names with X* or #* means there are multiple offerings, each one of which is a different grouping of countries. In order to see what countries belong to a specific group, please go to the following link: <http://www.ibm.com/common/ssi/cgi-bin/ssialias?subtype=ST&infotype=SA&htmlfid=ZZJ12392USEN&attachment=ZZJ12392USEN.XLS>.

2. Security Description

This Cloud Service follows IBM's data security and privacy principals for IBM SaaS which are available at <http://www.ibm.com/cloud/data-security> and any additional terms provided in this section. Any change to IBM's data security and privacy principals will not degrade the security of the Cloud Service.

IBM Silverpop Engage SMS relies on or incorporates third party technology provided by mGage. mGage's Safe Harbor certification status may be reviewed at <http://www.export.gov/safeharbor/>.

3. Service Level Agreement

IBM provides the following service level commitments ("SLA") for the Cloud Service as specified in a PoE. The SLA is not a warranty. The SLA is available only to Client and applies only to use in production environments.

3.1 Availability Credits

Client must log a Severity 1 support ticket with the IBM technical support help desk within twenty-four (24) hours of first becoming aware of an event that has impacted the Cloud Service availability. Client must reasonably assist IBM with any problem diagnosis and resolution.

A support ticket claim for failure to meet an SLA must be submitted within three (3) business days after the end of the contracted month. Compensation for a valid SLA claim will be a credit against a future invoice for the Cloud Service based on the duration of time during which production system processing for the Cloud Service is not available ("Downtime"). Downtime is measured from the time Client reports the event until the time the Cloud Service is restored and does not include time related to a scheduled or announced maintenance outage; causes beyond IBM's control; problems with Client or third party content or technology, designs or instructions; unsupported system configurations and platforms or other Client errors; or Client-caused security incident or Client security testing. IBM will apply the highest applicable compensation based on the cumulative availability of the Cloud Service during each contracted month, as shown in the table below. The total compensation with respect to any contracted month cannot exceed twenty (20) percent of one twelfth (1/12th) of the annual charge for the Cloud Service.

For bundled Cloud Services (individual Cloud Service offerings packaged and sold together as a single offering for a single combined price), the compensation will be calculated based on the single combined monthly price for the bundled Cloud Service, and not the monthly subscription fee for each individual Cloud Service. Client may only submit claims relating to one individual Cloud Service in a bundle at a given time.

3.2 Service Levels

Availability of the Cloud Service 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%

* If the Cloud Service was acquired from an IBM Business Partner, the monthly subscription fee will be calculated on the then-current list price for the Cloud Service in effect for the contracted month which is the subject of a claim, discounted at a rate of 50%. IBM will make a rebate directly available to Client.

Availability, expressed as a percentage, is calculated as: the total number of minutes in a contracted month minus the total number of minutes of Downtime in a contracted month divided by the total number of minutes in the contracted month.

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	= 2% Availability credit for 98.884% availability during the contracted month
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4. Technical Support

Technical support for the Cloud Service is provided via email, online support system, Live Chat and by phone. Technical support is offered with the Cloud Service and is not available as a separate offering.

Severity	Severity Definition	Response Time Objectives During Support Hours
1	Critical business impact/service down: Business critical functionality is inoperable or critical interface has failed. This usually applies to a production environment and indicates an inability to access services resulting in a critical impact on operations. This condition requires an immediate solution.	Within 1 hour
2	Significant business impact: A service feature or function is severely restricted in its use or Client is in jeopardy of missing business deadlines.	Within 2 business hours
3	Minor business impact: Indicates the service or functionality is usable and it is not presenting a critical impact on operations.	Within 4 business hours
4	Minimal business impact: An inquiry or non-technical request.	Within 1 business day

5. Entitlement and Billing Information

5.1 Charge Metrics

The Cloud Service is available under the charge metric specified in the Transaction Document:

- a. **Access** – is a unit of measure by which the Cloud Service can be obtained. An Access is the right to use the Cloud Service. Client must obtain a single Access entitlement in order to use the Cloud Service during the measurement period specified in the Proof of Entitlement (PoE) or Transaction Document.
- b. **Digital Message** – is a unit of measure by which the Cloud Service can be obtained. A Digital Message is an electronic communication managed or processed by the Cloud Service. Sufficient entitlements must be obtained to cover the total number of Digital Messages managed or processed by the Cloud Service during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document.
- c. **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 Cloud Service. Sufficient entitlements must be obtained to cover each Engagement.

5.2 Set-Up Charges

Set-up charges will be specified in the Transaction Document. IBM will charge a setup fee upon initial provisioning of the Set-up part. On-Demand options will be invoiced in the month the on-demand option is employed by the Client at the rate set forth in the Transaction Document.

- a. IBM Silverpop SMS Basic Onboarding Services
Silverpop SMS Basic Onboarding Services is a combination of provisioning process assistance and product consulting that is designed to enable users to configure and utilize Silverpop SMS. This remotely delivered service provides up to 15 hours of consulting and is required with an initial subscription to Silverpop SMS. 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 process assistance, configuration and setup, product consulting, and Q & A.
- b. IBM Silverpop SMS International Long Code (Group ILCS-AA) and IBM Silverpop SMS Shared Short Code (Group SSCS-XX*)
This service updates the Cloud Service environment with the SMS capability. Each IBM Silverpop Client must select a unique alphanumeric keyword to identify their mobile messages and distinguish them from others who are also simultaneously using the code.
- c. IBM Silverpop SMS National Long Code (Group NLCS-XX*) and IBM Silverpop SMS Dedicated Short Code (Group DSCS-XX*)
This service updates the Cloud Service environment with the SMS capability. Each IBM Silverpop Client is randomly assigned a code from an available pool of numbers.

Offering names with XX* means there are multiple offerings, each one of which is a grouping of countries. In order to see what countries belong to a specific group, please go to the following link:

<http://www.ibm.com/common/ssi/cgi-bin/ssialias?subtype=ST&infotype=SA&htmlfid=ZZJ12392USEN&attachment=ZZJ12392USEN.XLS>.

5.3 Partial Month Charges

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

5.4 Overage Charges

If actual usage of the Cloud Service during the measurement period exceeds the entitlement specified in the PoE, Client will be charged for the overage as specified in the Transaction Document.

For a Cloud Service with a Digital Message charge metric, IBM will invoice Client based upon the selected billing frequency for the Digital Message entitlements Client orders. Actual usage will be metered and overage charges will be due if actual message usage exceeds the total number of entitled messages in aggregate for up to 12 monthly measurement periods during the subscription period.

Client 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 message usage exceeds the total number of entitled messages in aggregate for such 12 monthly measurement periods.

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 messages in aggregate.

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

a. Example 1:

Client has a 12 month Subscription Period and has acquired one million Digital Messages per month. If Client sends more than 12 million Digital Messages before the end of the 12 month Subscription Period, Client 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:

Client has a three year Subscription Period and has acquired one million Digital Messages per month. If Client sends more than 12 million messages before the end of the first 12 months period, Client 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 Client sends more than 12 million Digital Messages before the end of the next 12 months period, Client 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.

6. Term and Renewal Options

The term of the Cloud Service begins on the date IBM notifies the Client of their access to the Cloud Service, as documented in the PoE. The PoE will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis, or terminates at the end of the term.

For automatic renewal, unless the Client provides written notice not to renew at least 90 days prior to the term expiration date, the Cloud Service will automatically renew for the term specified in the PoE.

For continuous use, the Cloud Service will continue to be available on a month to month basis until the Client provides 90 days written notice of termination. The Cloud Service will remain available to the end of the calendar month after such 90 day period.

7. Enabling Software

This Cloud Service includes enabling software, which may be used only in connection with Client's use of the Cloud Service and only for the Cloud Service term.

8. General

8.1 Mobile Messaging Specific Terms

a. IBM Silverpop International Long Code and IBM Silverpop Shared Short Code

Acts or inactions by any other IBM Silverpop Client sharing the same code may adversely affect the availability of the code. IBM Silverpop shall not be liable to Client for any interruption in the Services associated with the shared code arising out of such actions or inactions of any other IBM Silverpop Client simultaneously using the shared code.

b. IBM Silverpop International Long Code, IBM Silverpop National Long Code, and IBM Silverpop Dedicated Short Code

Clients planning on running Text to Win campaigns must have their code configured and approved for contest/sweepstakes use by the wireless carriers. Client must verify compliance for each country a contest/sweepstakes will be active in.

c. IBM Silverpop National Long Code and IBM Silverpop Dedicated Short Code

IBM Silverpop, on behalf of Client, will acquire/migrate the code that Client may already have and submit the necessary paperwork required for Client's use of the code to the wireless operators in the specific country for approval and activation/migration. IBM Silverpop provides standard code management services on behalf of Client which includes notifying and processing code renewal on behalf of Client. Some campaigns may be restricted or require additional approvals from wireless operators before running. IBM will work with Client and the wireless operator to accomplish this.

The time it takes for the wireless operators to activate/migrate a code typically takes between 8-12 weeks from when the activation/migration form is submitted to the wireless operators. Actual time may vary and is at the sole discretion of the wireless operators.

8.2 Distribution Lists

Client will not use any distribution lists with the Cloud Service that include persons who have not given permission to be included on such list for the purpose of receiving communications specifically from the Client, unless the Client 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. Client is required to include a valid opt-out mechanism in each message.

8.3 No Resale

Client will not resell the Cloud Service or provide third parties (other than employees or contractors working on Client's behalf) with access to the Cloud Service without IBM's prior, written consent.

8.4 Data Retention

Specific data elements of the Cloud Services will be available within the Cloud Services as follows: messages and content, unused or inactive databases – 450 days; and messages sent/received history – 90 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 Client's other related data, 30 days following termination or expiration of the Term. Client will retain back-up copies of all content provided for use in connection with the Cloud Service.

8.5 Non-English Language Versions

Client understands and agrees that access to and use of any non-English language version of the Cloud Service may rely on the functionality of a third party technology partner, translations.com, for purposes of translating the user interface. When using any non-English language version of the Cloud Service, the Cloud Service user interface may pass Client data and any content accessible through the Cloud Service user interface unencrypted through the translations.com systems dedicated to the Cloud Service for purposes of translating the user interface at Client's request.

8.6 Third Party Code Notices

This Cloud Service 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.

9. Client Representations and Warranties

Client represents and warrants that:

- a. none of the distribution lists used by Client include any person(s) who have not given prior express written permission and consent to be included on such list for the purpose of receiving communications;
- b. none of the distribution lists used by Client include any telephone numbers owned or used by any person(s) who have not given prior express written permission and consent to be included on such list for the purpose of receiving SMS messages;
- c. all of Client's messages include a valid opt-out mechanism in each message;
- d. each and every recipient of a message which Client transmits, directs or otherwise causes to be sent has provided their prior express written or other consent to receive the message(s) in accordance with all applicable statutes, laws and regulations, industry guidelines and applicable campaign application form commitments made during the provisioning process; and
- e. its use of the Cloud Service is in compliance with all applicable rules, regulations, directives, statements, and codes of practice relative to use of the Cloud Service (e.g. the Telephone Consumer Protection Act, Mobile Marketing Associations Consumers best practices guidelines, Cellular Telecommunications & Internet Association (CTIA) guidelines and agreements, and telephone carrier content and use standards (available upon request)).

Client will defend (at IBM's sole option), or, indemnify, and hold IBM harmless from and against any claims and/or damages that arise from or are related to (i) Client's use of the Cloud Service, (ii) Client's breach of the terms of this section or (iii) any recipient of any of Client's messages or by any other third-party claiming or alleging that Client is an agent, principal, joint venturer, partner, affiliate, representative, employee, employer, or fiduciary of IBM.

IBM will provide Client (at Client's expense) with information and assistance reasonably necessary to defend a claimAny investigation (faulty or otherwise) or any failure to investigate by IBM shall not limit or otherwise affect IBM's right or ability to obtain full and complete relief from Client.

9.2 Information and Independence

IBM does not:

- a. allow Client to access information and systems that are normally within IBM's exclusive control;
- b. review or approve the content of Client's messages;
- c. provide Client with distribution lists, customer lists, telephone numbers, or any other information regarding actual or potential recipients of Client's messages;
- d. investigate telephone numbers to determine their ownership, use, or validity;
- e. dial telephone numbers; and (f) monitor Client's compliance with applicable statutes, laws and regulations, industry guidelines and applicable campaign application form commitments made during the provisioning process.

Client does not allow IBM to:

- a. access information and systems that are normally within Client's exclusive control;
- b. approve the content of Client's messages;
- c. review or approve any of Client's distribution lists, customer lists, telephone numbers, or any other information regarding actual or potential recipients of Client's messages; and
- d. investigate telephone numbers to determine their ownership, use, or validity.