



# IBM Terms of Use – SaaS Specific Offering Terms

## IBM Omni-Channel Merchandising for Manufacturers

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 Shopper Insights for Manufacturers
- IBM Shopper Insights for Brokers
- IBM Assortment Optimization for Manufacturers
- IBM Advanced Deal Management for Manufacturers
- IBM Deal Management for Manufacturers

### 2. Definitions

The following terms shall have the meanings set forth below:

**Broker** — means a Client that represents one or more CP Companies as its sales agent handling headquarter and/or retail coverage. A Broker is authorized to access the IBM SaaS with a specific Included Retailer, for specific Product Categories, and only on behalf of specific named Brokered CP Companies.

**Brokered CP Company** — means a CP Company that engages a Broker to handle its representation to retailers in connection with planning promotions, submitting offers and other transactions.

**Consumer Products or CP** — means any article or component thereof produced or distributed for direct sale to a consumer. By way of example, “Consumer Products” include apparel and footwear, food and beverage, home and personal care, consumer durables & home appliances, consumer non-durables, specialty, and pet care, but do not include automobiles, airplanes, financial instruments, services or houses.

**CP Company** — means a Client who produces Consumer Products.

**Included Business** — means the division, business unit or channel (for example, physical stores versus on-line ecommerce) in connection with which Client subscribes to use the IBM SaaS.

**Included Geography** — means the geography in which the Client subscribes to use the IBM SaaS.

**Included Retailer** — means the Retailer or Retailers with which the CP Company subscribes to use the relevant IBM SaaS.

**Product Categories** — means grouping of products (also known as items or Stock Keeping Units (SKUs)) that meet a similar consumer need or that are inter-related or substitutable. Products placed together in the same category should be logistically manageable in store. The final determination of what constitutes a “Product Category” shall be subject to IBM’s reasonable discretion.

**Retailer** — means a Client engaged in the sale of Consumer Products in small or individual lots for direct consumption by the consumer.

**Total Sales** — means gross sales, excluding applicable sales tax, of the legal entity subscribing to the IBM SaaS that are derived from the sale of products sold by the Included Business based on the last reported full twelve month period prior to the initial term or renewal of the term. IBM may recalculate Total Sales if there is non-organic business growth to the Included Business as a result of a merger or acquisition. Client will promptly notify IBM of mergers or acquisitions that affect Total Sales of the Included Business.

Capitalized terms not defined in these Terms of Use are defined in the Agreement.

### 3. Charge Metrics

The IBM SaaS is available under the charge metric specified in the Transaction Document:

- a. Billion Revenue Conversion Unit (BRCU) is a unit of measure by which the IBM SaaS can be obtained. A Revenue Conversion Unit is a currency-independent measure of a Revenue amount relevant to the IBM SaaS. Currency-specific Revenue amounts must be converted into RCUs in accordance with the table located at Conversion unit table ([http://www-01.ibm.com/software/passportadvantage/conversion\\_unit\\_table.html](http://www-01.ibm.com/software/passportadvantage/conversion_unit_table.html)). Each BRCU entitlement represents one Billion (10 to the 9<sup>th</sup> power) RCUs. Sufficient BRCU entitlements must be obtained to cover the amount of Revenue as defined below. .
- b. Million Revenue Conversion Unit (MRCU) is a unit of measure by which the IBM SaaS can be obtained. A Revenue Conversion Unit is a currency-independent measure of a Revenue amount relevant to the IBM SaaS. Currency-specific Revenue amounts must be converted into RCUs in accordance with the table located at Conversion unit table ([http://www-01.ibm.com/software/passportadvantage/conversion\\_unit\\_table.html](http://www-01.ibm.com/software/passportadvantage/conversion_unit_table.html)). Each MRCU entitlement represents one Million RCUs. Sufficient MRCU entitlements must be obtained to cover the amount of Revenue as defined below..
- 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 IBM SaaS. Sufficient entitlements must be obtained to cover each Engagement.

Note: The definition/scope of Revenue differs by the particular IBM SaaS offering as outlined below:

IBM SaaS	Revenue Definition
IBM Assortment Optimization for Manufacturers	Revenue is the Total Sales of the Included Business generated by sales of included Product Categories to the Included Retailer
IBM Shopper Insights for Manufacturers IBM Shopper Insights for Brokers	Revenue is the Total Sales of the Included Business generated by sales of included Product Categories to the Included Retailer
IBM Advanced Deal Management for Manufacturers	Revenue is defined as Total Sales of the Included Business in the Included Geography

### 4. Charges and Billing

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

#### 4.1 Partial Month Charges

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

### 5. Term and Renewal Options

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

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

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

### 6. Technical Support

During the Subscription Period and after IBM notifies Client that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via email, online forums, and an online problem reporting system. Any enhancements, updates, and other materials provided by IBM as part of any such technical support are considered to be part of the IBM SaaS and therefore governed by this ToU. Technical support is included with the IBM SaaS and is not available as a separate offering.

More information about hours of availability, email addresses, online problem reporting systems, and other technical support communication vehicles and processes are described in the IBM Software as a Service Support Handbook.

Severity	Severity Definition	Response Time Objectives	Response Time Coverage
1	<b>Critical business impact/service down:</b> 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	24x7
2	<b>Significant business impact:</b> A service feature or function of the service is severely restricted in its use or Client is in jeopardy of missing business deadlines.	Within 2 business hours	M-F business hours
3	<b>Minor business impact:</b> Indicates the service or functionality is usable and it is not presenting a critical impact on operations.	Within 4 business hours	M-F business hours
4	<b>Minimal business impact:</b> An inquiry or non-technical request	Within 1 business day	M-F business hours

## 7. IBM SaaS Offering Additional Terms

### 7.1 Hub and Spoke Programs

Client acknowledges that each of the IBM SaaS is offered as part of a “Hub and Spoke” program for use by Client solely with a specific retailer. This means that the participating retailer has granted to IBM a limited, non-exclusive license to use that retailer’s data as required to provide the IBM SaaS to its CP trading partners. Use of the IBM SaaS or the participating retailers sales and product data for any other purpose is not permitted. In the case of Brokers, usage is further restricted for use with specific named Brokered CP Companies. In the event a participating retailer’s agreement with IBM terminates for any reason, IBM will give Client a pro-rated refund of unused amounts prepaid by Client based on the number of whole months remaining in Client’s term for the impacted IBM SaaS, and Client’s right to use the IBM SaaS will terminate. There will be no refund for unused partial months.

### 7.2 Use of Client Data by IBM

Client data may be utilized by IBM for internal research, testing, and development in a non-production environment provided IBM first removes all characteristics which may reveal Client’s identity or proprietary business processes. Client may elect for their data not to be used for such non-production purposes by contacting Technical Support.

### 7.3 Privacy Notice

Client is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect information from Client (Client’s employees and contractors) related to the use of the IBM SaaS, through tracking and other technologies. IBM does so 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 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 information.

### 7.4 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.

## Appendix A

### 1. **IBM Assortment Optimization for Manufacturers**

IBM Assortment Optimization for Manufacturers takes into account store-level, physical properties and the shopper needs for item-level incremental analysis and optimization scenarios. It generates multiple optimization scenarios for varying objectives such as shelf utilization and sales optimization.

### 2. **IBM Shopper Insights for Brokers**

IBM Shopper Insights for Brokers enables Brokers to analyze the behavior of shoppers of retailers that have subscribed to the retail version of IBM Shopper Insights, including trips, purchase frequency, and products purchased through a series of dashboards.

### 3. **IBM Shopper Insights for Manufacturers**

IBM Shopper Insights for Manufacturers enables manufacturers to analyze the behavior of shoppers of retailers that have subscribed to the retail version of IBM Shopper Insights, including trips, purchase frequency, and products purchased through a series of dashboards.

### 4. **IBM Deal Management for Manufacturers**

IBM Deal Management for Manufacturers enables manufacturers and brokers to automate and streamline presentations, negotiations, invoicing and reconciliation of deals they send to participating retailers in a web-based environment

### 5. **IBM Advanced Deal Management for Manufacturers**

IBM Advanced Deal Management for Manufacturers enables manufacturers and brokers to automate and streamline the entry, negotiation and reconciliation of trade promotions they send to participating retailers in a web-based environment. Advanced Deal Management incorporates manufacturer specified product views, as well as deal archives which allow access and reporting across items, deals, invoices, and billing. Advanced Deal Management incorporates additional capabilities to facilitate the deal process including deal replication, email alerts, extended visibility, fund tracking, and deal exports.

## 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:
  - (1) A scheduled or announced maintenance outage;
  - (2) Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, etc.);
  - (3) Problems with Client’s or a third party’s applications, equipment or data;
  - (4) Client’s failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS; or
  - (5) 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 a Service Level.

### 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 48 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 on the table below. IBM will not be liable for multiple Availability Credits for the same Event in the same Contracted Month.
- d. For Bundled Service (individual IBM SaaS 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 IBM SaaS. Client may only submit Claims relating to one individual IBM SaaS in a bundle in any Contracted Month, and IBM will not be liable for Availability Credits with respect to more than one IBM SaaS in a bundle in any Contracted Month.

- e. 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%.
- f. The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed twelve percent (12%) of one twelfth (1/12<sup>th</sup>) of the annual charge paid by Client to IBM for the particular 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)
97.00% - 99.00%	2%
95.00% – 96.99%	5%
Less than 95.00%	12%

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% Availability during the Contracted Month
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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.