

IBM DemandTec

The terms of this IBM Terms of Use (“Terms of Use” or “ToU”) 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 Terms of Use before using the IBM SaaS and any associated Enabling Software (as such terms are defined below). 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 Terms of Use are for the following IBM SaaS:

1.1 IBM SaaS for Retailers

- IBM DemandTec Price Management on Cloud
- IBM DemandTec Price Optimization on Cloud
- IBM DemandTec Promotion Optimization on Cloud
- IBM DemandTec Promotion Planning on Cloud
- IBM DemandTec Promotion Execution on Cloud
- IBM DemandTec Markdown Optimization on Cloud
- IBM DemandTec Deal Management for Retail on Cloud
- IBM DemandTec Shopper Insights for Retail on Cloud
- IBM DemandTec Assortment Optimization for Retail on Cloud
- IBM DemandTec Advanced Analytics Managed Cloud Delivery

1.2 IBM SaaS for Consumer Products Companies

- IBM DemandTec Customer Trade Planning on Cloud
- IBM DemandTec Strategic Trade Planning on Cloud
- IBM DemandTec Strategic Marketing Planning on Cloud for Manufacturers
- IBM DemandTec Post Event on Cloud
- IBM DemandTec Assortment Optimization on Cloud for Manufacturers in program
- IBM DemandTec Shopper Insights on Cloud for Manufacturers in program
- IBM DemandTec Advanced Deal Management on Cloud for Manufacturers in program
- IBM DemandTec Advanced Deal Management on Cloud for Brokers in program
- IBM DemandTec Deal Management on Cloud for Manufacturers in program
- IBM DemandTec Deal Management on Cloud for Brokers in program

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

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

2. Definitions

The following terms shall have the meanings set forth below:

Broker – means a Customer that represents one or more CP Companies as its sales agent handling headquarter and/or retail coverage.

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 – 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 Customer who produces Consumer Products.

Enabling Software – means 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.

Included Retailer – means the Retailer or Retailers with which the CP Customer subscribes to use the relevant IBM SaaS.

Platform Enablement Services – means the Remote Services listed and described in Section 6 Remote Services.

Product Category(s) – means a 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 Customer engaged in the sale of Consumer Products in small or individual lots for direct consumption by the consumer.

Total Sales – means all products sold to end consumers (in the case of a Retailer) or to Included Retailers (in the case of a CP Company) through all channels.

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

3. General Charge Terms

3.1 Metrics

Application is a unit of measure by which the IBM SaaS can be obtained. An Application is a uniquely named software program. Sufficient entitlements must be obtained for each Application made available to access and use 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 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.

Million Revenue Conversion Units (MRCUs) are 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 licensing of the IBM SaaS. Currency-specific revenue amounts must be converted into MRCUs in accordance with the table located at http://www.ibm.com/software/licensing/conversion_unit_table. Sufficient entitlements must be obtained for the number of MRCUs required to cover the Revenue processed or managed by the IBM SaaS during the measurement period specified in Customer’s Proof of Entitlement (PoE) or Transaction Document

Billion Revenue Conversion Units (BRCUs) are 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 BRCUs in accordance with the table located at http://www.ibm.com/software/licensing/conversion_unit_table. Sufficient entitlements must be obtained for the number of BRCUs required to cover the Revenue processed or managed by the IBM SaaS during the measurement period specified in Customer’s Proof of Entitlement (PoE) or Transaction Document

The definition of Revenue for purpose of calculating the number of MRCUs or BRCUs varies depending on the particular IBM SaaS offering as outlined below.

3.1.1 IBM SaaS for Retailers

- a. For the purposes of the MRCU calculation for the following:

- IBM DemandTec Price Management on Cloud
- IBM DemandTec Price Optimization on Cloud
- IBM DemandTec Shopper Insights for Retail on Cloud
- IBM DemandTec Assortment Optimization for Retail on Cloud
- IBM DemandTec Deal Management for Retail on Cloud

Revenue is Total Sales of the Originating Customer at the Originating Site.

b. For the purposes of the MRCU calculation for the following:

- IBM DemandTec Promotion Optimization on Cloud
- IBM DemandTec Promotion Planning on Cloud
- IBM DemandTec Promotion Execution on Cloud

Revenue is the Total Sales of the Originating Customer at the Originating Site generated by sales of Promoted Items. For purposes of these Terms of Use, Promoted Items are products that are temporarily featured and/or discounted or sold on any form of promotion, including without limitation, a temporary price reduction (TPR), mention in an advertisement or circular, display in a secondary location of a physical stores or on the main page of a website and coupons.

- c. For the purposes of the MRCU calculation for IBM DemandTec Markdown Optimization on Cloud – Revenue is the Total Sales of the Originating Customer at the Originating Site generated by sales of Markdown Items. Markdown Items are products sold on a permanent price reduction, generally aimed at clearing out excess supply, which includes clearance sales.
- d. For IBM DemandTec Advanced Analytics Managed Cloud Delivery Customer must obtain sufficient Application entitlements for this IBM SaaS, which corresponds, to the Customer's Revenue Level as specified in the table below. For the purposes of the this IBM SaaS, Revenue is the Total Sales of the Originating Customer at the Originating Site

Level 1 = up to 3 BRCU

Level 2 = up to 8 BRCU

Level 3 = up to 15 BRCU

Level 4 = above 15 BRCU

3.1.2 IBM SaaS for Consumer Products Companies

a. For the purposes of the MRCU calculations for the following:

- IBM DemandTec Customer Trade Planning on Cloud
- IBM DemandTec Post Event on Cloud

Revenue is the Total Sales of the Originating Customer at the Originating Site generated by sales of included Product Categories to Included Retailers.

b. For the purposes of the MRCU calculations for the following:

- IBM DemandTec Strategic Trade Planning on Cloud
- IBM DemandTec Strategic Marketing Planning on Cloud for Manufacturers

Revenue is the Total Sales of the Originating Customer at the Originating Site generated by sales of included Product Categories.

c. For the purposes of the MRCU calculations for the following:

- IBM DemandTec Assortment Optimization on Cloud for Manufacturers in program
- IBM DemandTec Shopper Insights on Cloud for Manufacturers in program

Revenue is the Total Sales of the Originating Customer at the Originating Site generated by sales of included Product Categories to Included Retailer in the program.

- d. For the purposes of the MRCU calculations for IBM DemandTec Advanced Deal Management on Cloud for Manufacturers in program – Revenue is the Total Sales of the Originating Customer at the Originating Site to the Included Retailer in the program

- e. For the purposes of the MRCU calculations for IBM DemandTec Advanced Deal Management on Cloud for Brokers in program – Revenue is the Total Sales to the Included Retailer of products represented by the Broker.

3.1.3 Platform Enablement Services

For all Platform Enablement Services Customer must obtain sufficient Engagement entitlements for the Platform Enablement Services which correspond to Customer's Revenue Level as specified in the table below. For the purposes of these Platform Enablement Services, Revenue is the Total Sales of the Originating Customer at the Originating Site

Level 1 = up to 3 BRCU

Level 2 = up to 8 BRCU

Level 3 = up to 15 BRCU

Level 4 = above 15 BRCU

3.2 Charges & Billing

3.2.1 Set-Up

Unless otherwise specified in an applicable Transaction Document, IBM shall charge a one-time setup charge upon initial provisioning of the IBM SaaS. The rate and billing term will be specified in such Transaction Document and billed accordingly.

3.2.2 Billing Options

The amount payable for 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 subscription fee is billable on an annual, quarterly, or monthly basis for the length of the term as specified in the Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of billing cycles in a year.

3.2.3 Partial Month Charges

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. 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.

3.2.4 Remote Services

Remote services will be charged on a per Engagement basis. The remote services will be billed on an annual, quarterly, or monthly basis as specified in a Transaction Document.

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 its Account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS on Customer's behalf.

5. 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 includes, without limitation, the following:

IBM DemandTec Publishing Manager

IBM DemandTec Strategic Planning Administration

6. Remote Services

The following remote services may be acquired by Customers of the IBM SaaS:

- IBM DemandTec Price Management – Platform Enablement Services
- IBM DemandTec Price Optimization – Platform Enablement Services
- IBM DemandTec Price and Promotion Optimization – Platform Enablement Services
- IBM DemandTec Promotion Optimization – Platform Enablement Services
- IBM DemandTec Promotion Planning – Platform Enablement Services

6.1 IBM Responsibilities for IBM DemandTec Price Management – Platform Enablement Services and DemandTec Promotion Planning – Platform Enablement Services

IBM will:

- Work with the Customer to obtain all required data fields as outlined in the relevant IBM Data Requirements Document for the applicable SaaS offering (“Customer Data”).
- Receive and load Customer Data on a weekly or daily cadence and maintain the data translation interface using standard tools. Additional fees could be required if Customer modifies the format of Customer Data, requests transmission of files back to Customer in a different format or requests that IBM modify data maps and automation scripts to take advantage of new data.
- Provide standard on-going account management services which ensure the Customer is supported after the implementation team rolls off. This account management service will be provided remotely and will not exceed 4 hours / week.

6.2 IBM Responsibilities for IBM DemandTec Price Optimization – Platform Enablement Services, IBM DemandTec Price and Promotion Optimization – Platform Enablement Services, and IBM DemandTec Promotion Optimization – Platform Enablement Services

IBM will:

- Work with the Customer to obtain all required data fields as outlined in the relevant IBM Data Requirements Document for the applicable SaaS offering (“Customer Data”).
- Receive and load Customer Data on a weekly or daily cadence and maintain the data translation interface using standard tools. Additional fees could be required if Customer modifies the format of Customer Data, requests transmission of files back to Customer in a different format or requests that IBM modify data maps and automation scripts to take advantage of new data.
- Perform its standard data validation for modeled product categories. Data validation consists of automated jobs running and checking Customer Data for potential errors and anomalies.
- Provide its standard econometric modeling services for each product category in accordance with the Project Plan, which services include creating modeling datasets, estimating models, assessing model quality, and troubleshooting models as needed. This includes initial modeling for each included product category and ongoing remodels on a reasonable cadence based on the dynamics of the category as reasonably assessed by IBM. In the case of a data restatement by Customer, IBM will work with Customer to determine whether a reload of the restated historical data and a remodel of the affected product categories is warranted, which may require additional fees to be agreed upon at that time.
- Provide standard on-going account management services which ensure the Customer is supported after the implementation team rolls off. This account management service will be provided remotely and will not exceed 6 hours / week.

6.3 Customer Responsibilities

Customer is responsible for providing the following:

- a. Strong Executive Support for the Project
- b. Direct access for IBM resources as necessary to complete assigned Project activities
- c. Appropriate level and number of Customer resources to work on the Project including:
 - IT programmer(s) to work with IBM's data integration team to create and maintain the appropriate data interfaces
 - Representatives from the business to ensure application requirements are properly translated into the contents of the data extracts
 - Strong Project team committed to the technical and business process work required
- d. Relevant data mapping documentation
- e. Transmission of Customer Data in accordance with agreed timelines
- f. Customer Data that matches IBM's format as specified in the current IBM Data Requirements Document
- g. Resources to address any issues in a timely manner
- h. Customer support for ensuring the information provided is correct

Customer acknowledges that its failure to perform the above obligations may affect IBM's ability to provide the Platform Enablement Services for the fees set forth in the applicable Transaction Document. If Platform Enablement Services are delayed or if IBM's cost of providing Platform Enablement Services is increased as a result of Customer's failure to perform the above tasks or because of any other circumstances outside of IBM's control, additional fees may be required. Additional fees and billing terms for such services will be ordered separately and specified in a Statement of Work.

7. Suspension of IBM SaaS and Termination

7.1 Suspension of Access

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.

7.2 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 Customer's possession or control.

8. Renewal of a Subscription Period

8.1 Automatic Renewal of a Subscription Period

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 A ONE YEAR TERM AT THE SAME PRICE AND BILLING FREQUENCY 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.

The following IBM SaaS offerings and remote services are subject to automatic renewal of the Subscription Period:

- IBM DemandTec Advanced Analytics Managed Cloud Delivery
- IBM DemandTec Price Management – Platform Enablement Services
- IBM DemandTec Price Optimization – Platform Enablement Services
- IBM DemandTec Price and Promotion Optimization – Platform Enablement Services

- IBM DemandTec Promotion Optimization – Platform Enablement Services
- IBM DemandTec Promotion Planning – Platform Enablement Services

8.2 Customer Renewal Required

In the event that a Customer's entitlement for the IBM SaaS does not include automatic renewal, then the IBM SaaS is not subject to automatic renewal and the Customer may renew a Subscription Period by placing an order either directly with IBM or through an IBM reseller, as applicable.

The following IBM SaaS offerings are not eligible for automatic renewal of the Subscription Period:

- IBM DemandTec Price Management on Cloud
- IBM DemandTec Price Optimization on Cloud
- IBM DemandTec Promotion Optimization on Cloud
- IBM DemandTec Promotion Planning on Cloud
- IBM DemandTec Promotion Execution on Cloud
- IBM DemandTec Markdown Optimization on Cloud
- IBM DemandTec Deal Management for Retail on Cloud
- IBM DemandTec Shopper Insights for Retail on Cloud
- IBM DemandTec Assortment Optimization for Retail on Cloud
- IBM DemandTec Customer Trade Planning on Cloud
- IBM DemandTec Strategic Trade Planning on Cloud
- IBM DemandTec Strategic Marketing Planning on Cloud for Manufacturers
- IBM DemandTec Post Event on Cloud
- IBM DemandTec Assortment Optimization on Cloud for Manufacturers in program
- IBM DemandTec Shopper Insights on Cloud for Manufacturers in program
- IBM DemandTec Advanced Deal Management on Cloud for Manufacturers in program
- IBM DemandTec Advanced Deal Management on Cloud for Brokers in program
- IBM DemandTec Deal Management on Cloud for Manufacturers in program
- IBM DemandTec Deal Management on Cloud for Brokers in program

9. 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.

10. Updates to Terms of Use

IBM reserves the right to prospectively modify these Terms of Use, to account for any Updates that IBM may provide or make available for the IBM SaaS during the Subscription Period, and as otherwise required by applicable law, by providing at least thirty (30) days prior notice of such modified terms to Customer. Subscription renewals will be governed by the Terms of Use in effect at the time of renewal.

11. Technical Support

Technical support for the IBM SaaS and Enabling Software, as applicable, is included during the Subscription Period. Technical support options are detailed at www.demandtec.com/support

Items Not Covered by Technical Support

Technical support does not include assistance with:

- a. the design and development of applications,
- b. issues arising out of Customer's use of IBM SaaS in other than its specified operating environment, or

- c. assistance with Customer or third party products and services, or issues arising out of the use of IBM SaaS with Customer or third party products or services.

12. Data Privacy and Data Security

12.1 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 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. 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.

IBM SaaS is not intended for the storage or receipt of any Sensitive Personal Information or Protected Health Information (as defined below), in any form, and Customer will be responsible for reasonable costs and other amounts IBM may incur relating to any such information provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims. "Sensitive Personal Information" is: 1) Personal Data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to financial information, country identification number (e.g. Social Insurance Number (SIN), Social Security Number (SSN)) or other governmentally issued identification number such as driver's license or passport number, bank account number, credit card or debit card number; and 2) Personal Data relating to racial or ethnic origin, sexual orientation, or political opinions or religious, ideological or philosophical beliefs or activities or trade union membership. "Protected Health Information" is "individually identifiable health information" as defined under the Health Information Portability and Accountability Act of 1996 ("HIPAA"), as amended.

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. 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.

If IBM makes a change to the way it processes or secures Personal Data as part of IBM SaaS and the change causes Customer to be noncompliant with data protection laws applicable to it, Customer may terminate the current Subscription Period for the affected IBM SaaS, by providing written notice to IBM within thirty (30) days of IBM's notification of the change to Customer. Any such termination will not obligate IBM to issue a refund or credit to Customer.

12.2 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.

Upon Customer's written request, following termination or expiry of either this ToU or the Agreement, IBM will destroy or return to Customer all Content that Customer identifies as 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.

12.3 Protection of Content

Notwithstanding anything to the contrary contained in the Agreement:

- a. IBM will not intentionally disclose or use Customer's Content except to operate and perform the IBM SaaS as contemplated in this Agreement, subject to IBM's compliance with applicable laws; and
- b. IBM will only process Customer Content on systems used to host and operate the IBM SaaS on which IBM has implemented the security practices and procedures referenced in Section 12.4.

12.4 Security Practices

IBM implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS. These practices and procedures are designed to reduce the vulnerability of our systems to accidental loss, unlawful intrusions, unauthorized access, disclosure or alteration or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the IBM SaaS. A description of the practices and procedures applicable to the IBM SaaS, including applicable technical and operational measures, is available to Customer upon request. Customer is responsible for determining whether these practices and procedures are appropriate to meet Customer's requirements. By using the IBM SaaS, Customer acknowledges its acceptance of the IBM practices and procedures and their adequacy for Customer's purposes. Except as specifically provided in the Security Practices for the IBM SaaS, IBM makes no representations or warranties regarding any security functions.

13. 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.

14. 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.

15. 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>.

16. Warranty and Exclusions

16.1 Limited Warranty

IBM warrants that IBM SaaS will conform to its specifications, which are published and made available by IBM. Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

If the IBM SaaS does not function as warranted, and IBM is unable to make it do so, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect during the Subscription Period for the IBM SaaS offering.

17. IBM SaaS Offering Unique Terms

17.1 Data Requirements

Customer understands and agrees that in order to use any of the retail IBM SaaS, Customer must provide IBM with the product, financial and other data prescribed in the Retail IBM Data Requirements Document in effect on the date on which the data is provided (the "Retailer Data"). A copy of the current Retail Data Requirements Document can be found at <http://www.demandtec.com/mydemandtec/supportdocs> and is subject to modification by IBM from time to time, in its sole discretion.

Customer understands and agrees that in order to use any of the consumer products IBM SaaS, Customer must provide IBM with the product, financial and other data prescribed in the CP Data Requirements Document in effect on the date on which the data is provided (the "CP Data" and, together with the Retailer Data, the "Customer Data"). A copy of the current CP Data Requirements Document can be found at <http://www.demandtec.com/mydemandtec/supportdocs> and is subject to modification by IBM from time to time, in its sole discretion.

All Customer Data shall be considered "Content" for purposes of the Agreement.

17.2 IBM SaaS User Profile Information

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.

17.3 License Grant

- a. Each Retailer who contracts with IBM to use a IBM SaaS as part of a "Hub and Spoke" program (e.g. IBM DemandTec Deal Management for Retail on Cloud, IBM DemandTec Shopper Insights for Retail on Cloud and IBM DemandTec Assortment Optimization for Retail on Cloud), hereby grants to IBM a limited, non-exclusive license, during the Subscription Period, to use, copy, store, record, transmit, maintain, display, view, print, or otherwise use such Retailer's Retailer Data solely to the extent necessary to provide such IBM SaaS to Retailer's CP trading partners who have subscribed for such IBM SaaS.
- b. In addition, each Customer (whether a Retailer or a CP Company) hereby grants to IBM a non-exclusive license (the "Research License"), during the Subscription Period, to analyze, use, copy, store, record, transmit, maintain, display, view, print, or otherwise use Customer Data for research and/or data mining purposes, provided that IBM first removes all characteristics of such Customer Data that might reveal (i) the identity of Customer or (ii) any confidential or proprietary aspects of Customer's internal business processes and provided further, that Customer may opt out of the Research License by notifying IBM thereof in writing at the time the initial applicable Transaction Document is signed.
- c. Each CP Company acquiring an entitlement to use IBM SaaS as part of a "Hub and Spoke" program (e.g. IBM DemandTec Advanced Deal Management on Cloud for Manufacturers in program, IBM DemandTec Shopper Insights on Cloud for Manufacturers in program, and IBM DemandTec Assortment Optimization on Cloud for Manufacturers in program) may only use the IBM SaaS as part of an Included Retailer's program and with the Included Retailer's sales and product data. Use of the IBM SaaS or the Included Retailer's sales and product data for any other purpose is not permitted.

17.4 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.

18. 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.

19. 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:

- 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

8.1 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

8.1 Automatic Renewal of a Subscription Period

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

BRAZIL

8.1 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

8. 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 8.1 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

AUSTRALIA

16.1. Limited Warranty

The following is added to the end of Section 16.1:

The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

BANGLADESH, BHUTAN, AND NEPAL

8. Renewal of a Subscription Period

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 8.1 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.

JAPAN

16.1. Limited Warranty

The following is deleted from the first paragraph of Section 16.1:

Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

NEW ZEALAND

16.1. Limited Warranty

The following is added to this Section 16.1:

The warranties specified in this Section are in addition to any rights Customer may have 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 16: 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 16: Warranty and Exclusions.

AUSTRIA

16. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following:

16. 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.

BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, AND UNITED ARAB EMIRATES

8.1. 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 8.1 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.

GERMANY

16. Warranty and Exclusions

If you paid a charge for the IBM SaaS then the Section 16 Warranty and Exclusions is replaced in its entirety by the following:

16. 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

16. 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

19. Entire Agreement

The following sentence is added at the beginning of this Section 19:

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

Service Level Agreement

This Service Level Agreement (SLA) is for the following IBM SaaS:

- IBM DemandTec Price Management on Cloud
- IBM DemandTec Price Optimization on Cloud
- IBM DemandTec Promotion Optimization on Cloud
- IBM DemandTec Promotion Planning on Cloud
- IBM DemandTec Promotion Execution on Cloud
- IBM DemandTec Markdown Optimization on Cloud
- IBM DemandTec Deal Management for Retail on Cloud
- IBM DemandTec Shopper Insights for Retail on Cloud
- IBM DemandTec Assortment Optimization for Retail on Cloud
- IBM DemandTec Customer Trade Planning on Cloud
- IBM DemandTec Strategic Trade Planning on Cloud
- IBM DemandTec Strategic Marketing Planning on Cloud for Manufacturers
- IBM DemandTec Post Event on Cloud

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. You understand that this SLA does not constitute a warranty to you.

1. Definitions

- a. "Authorized Contact" means the individual you have specified to IBM who is authorized to submit Claims under this SLA.
- b. "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.
- c. "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.
- d. "Contracted Month" means each full month during the Subscription Period 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.
- e. "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.
- f. "Downtime" means a period of time during which production system processing for the Service has stopped and all your users of the Service are completely unable to access the applicable Service for which they have appropriate permissions; provided, however, that 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.

- g. "Event" means a circumstance or set of circumstances taken together, resulting in a failure to meet a Service Level.
- h. "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.
- i. "Planned System Downtime" means a scheduled outage of the Service for the purpose of service maintenance.
- j. "Service Level" means the standard set forth below by which IBM measures the level of service it provides in this SLA.
- k. "Service" means the Service to which this SLA applies, as shown on the first page of this SLA. This SLA applies to each Service individually and not in combination.

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. 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.

The total Availability Credits awarded with respect to any Contracted Month shall not, under any circumstance, exceed twelve percent (12%) 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

Availability of Service during a Contracted Month

Achieved Service Level	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%

“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: 540 minutes total Downtime during Contracted Month

$\frac{43,200 \text{ total minutes in a 30 day Contracted Month} - 540 \text{ minutes Downtime} = 42,660 \text{ minutes}}{43,200 \text{ total minutes in a 30 day Contracted Month}}$	$= 2\% \text{ Availability Credit for } 98.75\% \text{ Achieved Service Level}$
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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.