



IBM Terms of Use – SaaS Specific Offering Terms

IBM Omni-Channel Merchandising

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/.

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 Price Management
- IBM Price Optimization
- IBM Promotion Optimization
- IBM Promotion Planning
- IBM Promotion Execution
- IBM Markdown Optimization
- IBM Deal Management
- IBM Deal Management: Bill Distribution Module
- IBM Basket Insights
- IBM Shopper Insights
- IBM Assortment Optimization
- IBM Omni-Channel Merchandising Preview

2. Definitions

The following terms shall have the meanings set forth below:

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.

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

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

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 sold under one of the following charge metric(s) as specified in the Transaction Document:

- a. 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). Each MRCU entitlement represents one Million RCUs. Sufficient MRCU entitlements must be obtained to cover the amount of Revenue as defined below. .
- b. 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 Price Management IBM Basket Insights IBM Shopper Insights IBM Assortment Optimization IBM Deal Management IBM Deal Management: Bill Distribution Module	Revenue is Total Sales of the Included Business that the Client intends to use with the IBM SaaS (a subscription could be limited to specific product categories of the Included Business)
IBM Price Optimization	Revenue is the Total Sales that the Client intends to optimize (a subscription could be limited to a portion of the Included Business)
IBM Promotion Optimization IBM Promotion Planning IBM Promotion Execution	Revenue is the Total Sales of the Included Business that are generated by sales of Promoted Items. For purposes of this IBM SaaS, 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 physical stores or on the main page of a website and coupons. Promoted Items do not include Markdown Items.
IBM Markdown Optimization	Revenue is the Total Sales of the Included Business that are generated by sales of Markdown Items. For purpose of this IBM SaaS, Markdown Items are products sold on a permanent price reduction, generally aimed at clearing out excess supply, which includes clearance sales.

3.2 Platform Enablement Services

For the purposes of the Platform Enablement Services, Revenue is the Total Sales of the Included Business.

To determine the appropriate Platform Enablement Service level to purchase, Client must first determine the appropriate Billion Revenue Conversion Units (BRCU) that applies to their company. A BRCU 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 http://www.ibm.com/software/licensing/conversion_unit_table. Each BRCU entitlement represents one Billion (10 to the 9th power) RCUs. The BRCUs calculated must cover the amount of Revenue processed or managed by the IBM SaaS during the measurement period.

Level 1 = up to 3 BRCU

Level 2 = up to 8 BRCU

Level 3 = up to 15 BRCU

Level 4 = above 15 BRCU

4. Charges and Billing

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

4.1 Set-Up

Set-up charges will be specified in a Transaction Document. A set-up fee will be charged for initial or additional as appropriate.

- a. IBM Omni-Channel Merchandising One-Time Setup -- IBM shall charge a one-time setup fee upon initial provisioning of the IBM SaaS. The rate and billing term will be specified in the Transaction Document and billed accordingly.
- b. IBM Omni-Channel Merchandising Additional Application Setup Fee -- IBM shall charge a setup fee for each Additional Application Setup Fee ordered. The rate and billing term will be specified in the Transaction Document and billed accordingly.

4.2 Partial Month Charges

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

5. Ongoing Services Subscription

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

- IBM Price Management – Platform Enablement Services
- IBM Promotion Planning – Platform Enablement Services
- IBM Price Optimization – Platform Enablement Services
- IBM Price and Promotion Optimization – Platform Enablement Services
- IBM Promotion Optimization – Platform Enablement Services
- IBM Markdown Optimization – Platform Enablement Services
- IBM Basket Insights – Platform Enablement Services

5.1 IBM Price Management – Platform Enablement Services, IBM Promotion Planning – Platform Enablement Services, IBM Basket Insights – Platform Enablement Services

IBM will:

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

5.2 IBM Price Optimization – Platform Enablement Services, IBM Promotion Optimization – Platform Enablement Services, IBM Markdown Optimization – Platform Enablement Services, IBM Price and Promotion Optimization – Platform Enablement Services

IBM will:

- a. Work with the Client to obtain all required data fields as outlined in the relevant IBM Import Data Specification Document for the applicable SaaS offering (“Client Data”).
- b. Receive and load Client Data on a weekly or daily cadence and maintain the data translation interfaces (inbound and outbound) using standard tools. Additional fees could be required if Client modifies the format of Client Data following initial implementation, requests transmission of files back to Client in a different format or requests that IBM modify data maps and automation scripts to take advantage of new data.
- c. Perform its standard data validation for modeled product categories. Data validation consists of automated jobs running and checking Client Data for potential errors and anomalies.
- d. 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 Client, IBM will work with Client 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.

- e. Provide standard on-going account management services which ensure the Client is supported after the implementation team rolls off. This account management service will be provided remotely and will not exceed 6 hours / week.

5.3 Client Responsibilities for Platform Enablement Services

Client is responsible for providing the following:

- a. Direct access for IBM resources as necessary to complete assigned Platform Enablement Services activities
- b. Appropriate level and number of Client 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 for performing the following technical and business process work required:
 - Relevant data mapping documentation
 - Transmission of Client Data in accordance with agreed timelines
 - Client Data that matches IBM's format as specified in the current IBM Import Data Specification Document
 - Resources to address any issues in a timely manner
 - Client support for ensuring the information provided is correct

Client acknowledges that its failure to perform the above obligations may affect IBM's ability to provide the Platform Enablement Services. If Platform Enablement Services are delayed or if IBM's cost of providing Platform Enablement Services is increased as a result of Client'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.

6. 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.

7. 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	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	24x7
2	Significant business impact: A service business 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	Minor business impact: Indicates the service or functionality is usable and it is not a critical impact on operations.	Within 4 business hours	M-F business hours
4	Minimal business impact: An inquiry or non-technical request	Within 1 business day	M-F business hours

8. IBM SaaS Offering Additional Terms

8.1 Data and Minimum Equipment Requirements

Client understands and agrees that in order to use any of the retail IBM SaaS, Client must provide IBM with the product, financial and other data prescribed in the IBM Import Data Specification Document in effect on the date on which the data is provided (the "Import Data"). A copy of the current IBM Import Data Specification Document will be provided and is subject to modification by IBM from time to time, in its sole discretion. Further, each IBM SaaS has minimum equipment requirements to access the service, which are described in the service specifications and available upon request.

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

8.2 Use of Import Data By Retailer's Trading Partners

If Client subscribed to IBM Deal Management, IBM Deal Management: Bill Distribution Module, IBM Shopper Insights, or IBM Assortment Optimization, during the Subscription Period Client authorizes IBM to use Import Data to provide IBM SaaS to Client's trading partners who have also subscribed to an IBM SaaS and require access to Import Data.

8.3 Return of Import Data

IBM shall destroy any Import Data in its possession ninety (90) days following the date of termination or expiration of the Subscription Period. Import Data may be returned upon written request and will be processed under an additional contract for an additional charge.

8.4 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.

8.5 Privacy Notice

Client is aware and agrees that IBM may, as part of the normal operation and support of the IBM SaaS, collect personal 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.

8.6 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.

8.7 Preview Limitation

If the IBM SaaS is designated as "Preview", the IBM SaaS can be used by Client only for internal non-production or preview activities, including testing, performance tuning, fault diagnosis, internal benchmarking, staging, quality assurance activity and/or developing internally-used additions or extensions to the IBM SaaS using published application programming interfaces. Client is not authorized to use any part of the IBM SaaS for any other purpose without acquiring the appropriate production entitlements.

Appendix A

1. **IBM Price Management**

IBM Price Management enables retailers to implement pricing strategies by determining prices for a given item and maintaining all prices over time through the enforcement of pricing rules. The retailer can use IBM Price Management to set up scenarios, customize pricing rules, have the system rules price all of their merchandise and also react to data changes, such as vendor costs and competitor prices on a regular basis.

2. **IBM Price Optimization**

IBM Price Optimization enables retailers to create and run simulation and optimization scenarios in which they define strategic objectives such as increased revenues, profits, and sales volume and optimize prices to best achieve these objectives.

3. **IBM Promotion Planning**

IBM Promotion Planning provides a collaborative, web-based interface for setting-up and managing item and group level promotions, including price, valid dates, performance details, and locations. IBM Promotion Planning enables retailers to establish a single repository of promotional offers improving visibility and accountability, helps to reduce errors, and streamlining execution.

4. **IBM Promotion Optimization**

IBM Promotion Optimization helps clients determine in real-time the optimal promotions that will accomplish their merchandising and marketing objectives. Retailers use IBM Promotion Optimization to evaluate and forecast incoming vendor offers as well as to plan private label and other promotions. IBM Promotion Optimization assists retailers to determine the discounted price for any item or promoted item group; the type of temporary price reduction, such as buy one get one, percent off, and multiples; and the use of merchandising support, such as ads and displays, as well as specific placement within an ad, to maximize the incremental lift and total store impact of every promotion.

5. **IBM Promotion Execution**

IBM Promotion Execution enables retailers to build a single repository for their information and content about promotional offers and events (ads, flyers, mobile, email, display, signage, etc.), including copy and images, and event level details.

6. **IBM Markdown Optimization**

IBM Markdown Optimization enables retailers to plan and optimize pricing, profit and inventory levels for items leaving the assortment. IBM Markdown Optimization supports a wide range of markdown types, including seasonal, short product lifecycle, event and holiday, category reset, cycle refresh, and standard discount markdowns. Retailers can also create, forecast, compare, and evaluate multiple markdown pricing scenarios to fine-tune their markdown strategy.

7. **IBM Deal Management**

IBM Deal Management enables retailers to automate and streamline the presentation, negotiation, and reconciliation of trade promotions they receive from their consumer product manufacturer trading partners in a web-based environment.

8. **IBM Deal Management: Bill Distribution Module**

IBM Deal Management: Bill Distribution Module enables retailers to reduce processing cycle time, account receivable turnover ratio and manual errors through automated generation and secure distribution of PDF invoices to consumer product manufacturer trading partners.

9. **IBM Basket Insights**

IBM Basket Insights enables retailers to analyze transactions through a series of dashboards.

10. IBM Shopper Insights

IBM Shopper Insights enables retailers to analyze shopper behavior including trips, purchase frequency, and product purchase through a series of dashboards. Once a particular retailer subscribes to IBM Shopper Insights, IBM makes available IBM Shopper Insights for Brokers to that retailer's broker trading partners and IBM Shopper Insights for Manufacturers to that retailer's consumer product trading partners.

11. IBM Assortment Optimization

IBM Assortment Optimization enables retailers to determine which items should be stocked, by store cluster and planogram, based on shopper purchase behavior, the competitive environment, and a quantified understanding of whether an item is merely duplicative or provides incremental sales to the product category. Once a retailer subscribes to IBM Assortment Optimization, IBM makes available IBM Assortment Optimization for Manufacturers so that retailer's vendors and trading partners can collaborate with the retailer to enable assortment decisions based on the retailer's sales data.

12. IBM Omni-Channel Merchandising Preview

IBM Omni-Channel Merchandising Preview allows current Clients to preview upcoming releases to help them prepare for new or updated capabilities.

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 a Service Level 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 an SLA.

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 a 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 (1/12th) 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: 10px 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 Omni-Channel Merchandising Preview or test, disaster recovery, quality assurance, or development.
- Claims made by Client's users, guests, participants and permitted invitees of the IBM SaaS.