



IBM Terms of Use – SaaS Specific Offering Terms

IBM Emptoris Managed Cloud Delivery

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 Emptoris Sourcing Managed Cloud Delivery
- IBM Emptoris Sourcing Managed Cloud Delivery Burst Mode
- IBM Emptoris Spend Analysis Managed Cloud Delivery
- IBM Emptoris Supplier Lifecycle Management Managed Cloud Delivery
- IBM Emptoris Program Management Managed Cloud Delivery
- IBM Emptoris Contract Management Managed Cloud Delivery
- IBM Emptoris Contract Management Buy Side Managed Cloud Delivery
- IBM Emptoris Contract Management Sell Side Managed Cloud Delivery
- IBM Emptoris Contract Management for Commercial Banking Agreements Managed Cloud Delivery
- IBM Emptoris Services Procurement Managed Cloud Delivery
- IBM Emptoris Managed Cloud Delivery Virtual Private Network Connection
- IBM Emptoris Managed Cloud Delivery Edge Delivery Web Application Accelerator
- IBM Emptoris Strategic Supply Management Managed Delivery Encrypted Database

1.1 Associated IBM Programs

The IBM Emptoris Managed Cloud Delivery services do not include Subscription and Support for the associated IBM program. Client represents that Client has acquired the applicable (1) license entitlements and (2) Subscription and Support for the IBM program. During the Subscription Period of the IBM SaaS, to receive Subscription and Support for the IBM programs, Client will need to maintain current Subscription and Support for the IBM programs. During the term of this agreement each Instance of the IBM SaaS specified in the Transaction Document may only use supported versions of IBM Programs as defined by the IBM Support Lifecycle document as having standard support currently available.

2. Charge Metrics

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

- a. Instance is a unit of measure by which the IBM SaaS can be obtained. An Instance is access to a specific configuration of the IBM SaaS. Sufficient entitlements must be obtained for each Instance of the IBM SaaS made available to access and use during the measurement period specified in Client's PoE or Transaction Document.
- b. Connection is a unit of measure by which the IBM SaaS can be obtained. A Connection is a link or association of a database, application, server, or any other type of device to the IBM SaaS. Sufficient entitlements must be obtained to cover the total number of Connections which have been or are made to the IBM SaaS during the measurement period specified in Client's PoE or Transaction Document.

3. Charges and Billing

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

3.1 Partial Month Charges

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

4. IBM SaaS Subscription Period 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 expiring IBM SaaS subscription period is automatically renewed for a term equal in length to the initial subscription term at the same price and billing frequency

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.

5. Technical Support

After IBM notifies Client that access to the IBM SaaS is available, technical support for the IBM SaaS is provided via telephone, 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.

The following severities are used to track support tickets for the IBM SaaS:

Severity	Severity Definition
1	Critical business impact/service down issues include <ul style="list-style-type: none">• Unable to use the product or reasonably continue work using the product in a production Instance• Product security has been breached• Data corruption is occurring• Supplier and buyer unable to place bids (via UI and via import)• All users are unable to create contracts, open contract language, approve contracts and execute contracts• Client's AP/GL feed does not produce a file or expected result which impacts their ability to pay invoices without a workaround.
2	Significant business impact issues include: <ul style="list-style-type: none">• Critical product components not working properly.• Behavior has created a significant negative impact on productivity• Users not receiving event invitations• Contracts Approval Workflows and Rules function Incorrectly• Orders not being transmitted successfully to vendors• Invoice reader not operational• Invoice approval workflow not functioning as designed Invoices are not allocating as designed
3	Minor business impact issues include: <ul style="list-style-type: none">• Product components not working properly although an alternative solution is available• A non-essential feature is unavailable with no alternative solution• Unable to attach document to items in event• Notification Template Formatting Incorrect• Non-critical software features are producing unexpected results.
4	Minimal business impact issues include: <ul style="list-style-type: none">• Product information request• Product documentation clarification• How to export an event• How to Schedule a Reporting Job

6. IBM SaaS Offering Additional Terms

6.1 Third Party Site and Services

If Client 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 offering, Client and the IBM User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Client 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.

6.2 Safe Harbor Compliance

IBM abides by the U.S. - EU Safe Harbor Framework as set forth by the United States Department of Commerce regarding the collection, use and retention of information collected from the European Union. For more information about Safe Harbor or to access IBM's certification statement, go to <http://www.export.gov/safeharbor/>.

6.3 Data

6.3.1 Collection

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 to gather usage statistics and information about effectiveness of our IBM SaaS 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 personal 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 personal information.

6.3.2 Processing

For transactions performed in all EU Member States, Iceland, Liechtenstein, Norway and Switzerland, the following terms apply:

Client agrees that IBM may process content including any personal data (as that term is defined in the EU Directive 95/46/EC) across a country border to the following countries: Australia, Belarus, Canada, France, Germany, India, Ireland, Netherlands, the United Kingdom and the United States. Client agrees that IBM may, on notice, vary this list of country locations when it reasonably determines it necessary for the provision of the IBM SaaS.

When IBM's US-Swiss Safe Harbor Frameworks do not apply to a transfer of European Economic Area or Swiss personal data, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU with optional clauses removed. All disputes or liability arising under these agreements, even if entered into by affiliates, will be treated by the parties as if the dispute or liability arose between them under the terms of this Agreement.

6.4 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.

6.5 IBM SaaS Content

Backups are performed daily for production Instances and weekly for non-production Instances. IBM will retain a backup copy of Client's data for a maximum period of 90 days for production Instances and up to 7 days for non-production Instances. Backups are maintained by IBM only for disaster recovery or other efforts to restore the IBM SaaS and are not intended to be used to recover data deleted from the IBM SaaS by the Client. Client is responsible for configuring the IBM SaaS security to prohibit individual users from deleting data, and once the data is deleted Client acknowledges and agrees IBM cannot and is not obligated to recover the deleted data.

Before the termination of the IBM SaaS Client can use any of the provided reporting or export features of the IBM SaaS to extract data. Custom Data Extract services are available under a separate SOW. Upon receiving a request from Client within 30 days of the termination of the IBM SaaS IBM will destroy or

return to Client an electronic copy of Client's content in the native application format. Certification of destruction of the content or a request for a copy of the content can be requested by contacting Technical Support.

6.6 Downtime

The planned maintenance downtime window for the IBM SaaS is listed in the IBM Software as a Service Support Handbook. Additional Downtime can be scheduled in advance by notifying Client through Client Support. During this time the IBM SaaS might or might not be available based on the type of maintenance planned. Downtime during this window is not included in any SLA credit calculations. IBM reserves the right to have unscheduled downtime for emergency purposes.

6.7 Additional Services

6.7.1 Application Upgrades

IBM will install and configure software upgrades to the production or non-production Instances at a mutually agreed time, subject to scheduling availability.

IBM will provide notice 12 months prior to the termination of support for the version of the Associated IBM program for the IBM SaaS. IBM will work with Client to migrate each of its Instances of the IBM SaaS to a supported version of the Associated IBM Programs prior to the termination of support date. Client will be responsible for the migration costs. If the migration to a supported version of the IBM program is not completed within the notice period, other than as a result of delays caused solely by IBM or its subcontractors, IBM may terminate this agreement upon 30 days written notice to Client.

6.7.2 Database Refreshes

IBM will replicate production database contents to Client's non-production Instance once per quarter, for each non-production system purchased. Refresh services will be performed at a mutually agreed time, subject to scheduling availability.

6.8 Client Provided Certificates

The IBM SaaS will be configured to use an IBM provided internet uniform resource locator unless Client request specifically to use its own internet uniform resource locator. If Client chooses to use its own internet uniform resource locator for the IBM SaaS then Client will bear all responsibility, maintenance and costs for the renewal of the uniform resource locator and any required certificates. Client must deliver the required certificates and setup information to IBM before the provisioning of Client's IBM SaaS is completed.

6.9 Disaster Recovery

In the event of a major system disruption disaster recovery will be accomplished by restoring Client's production data to one of Client's Non-Production Instances or Connections and is only available if Client has purchased at least one Non Production Instance. Disaster recovery is only available for production Instances and Connections. IBM will perform disaster recovery using commercially reasonable efforts to restore Client's Service with a Recovery Time Objective of 72 hours and with a Recovery Point Objective of 24 hours for production Instances or Connections.

6.10 Restrictions for IBM Sourcing Managed Cloud Delivery and Emptoris Sourcing Managed Cloud Delivery Burst Mode

The infrastructure for IBM Emptoris Sourcing Managed Cloud Delivery offering has been configured to support:

- 300 Concurrent Users running RFP, RFI, RFQ or buyer survey events or
- 270 Concurrent Users running English reverse and English forward auctions or
- 60 Concurrent Users running Japanese or Dutch reverse or forward auctions.

Concurrent Users are defined as users who are logged onto and active in the system concurrently. The system may be configured to process additional volume of Concurrent Users depending upon various factors. Additional infrastructure resources may be required to support larger usage volumes.

If Client utilizes the Official Journal of the European Union (OJEU) feature where the sourcing system transmits data to the Tenders Electronic Daily (TED) site, the Client is responsible for applying to the OJEU and passing the GAMMA testing. The data transmission is solely between the Client and this third party site. 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.

Appendix A

1. IBM SaaS Description

The following IBM SaaS offerings are described below:

- IBM Emptoris Contract Management for Commercial Banking Agreements Managed Cloud Delivery
- IBM Emptoris Contract Management Sell Side Managed Cloud Delivery
- IBM Emptoris Contract Management Managed Cloud Delivery
- IBM Emptoris Contract Management Buy Side Managed Cloud Delivery
- IBM Emptoris Services Procurement Managed Cloud Delivery
- IBM Emptoris Sourcing Managed Cloud Delivery
- IBM Emptoris Spend Analysis Managed Cloud Delivery
- IBM Emptoris Supplier Lifecycle Management Managed Cloud Delivery
- IBM Emptoris Program Management Managed Cloud Delivery

Client will receive Managed Cloud Delivery Services in connection with the operation and use of, and access to the software Client has licensed, including production servers, production storage, and a connection between the production server(s) and the Internet. We may also provide an optional non-production application platform (as described below) if an additional instance is specified in the Transaction Document. IBM will integrate, set-up and configure the equipment necessary to provide the Managed Cloud Delivery Services for the licensed software described in the Transaction Document. Managed Cloud Delivery Services do not include data migration, which will be performed on a quoted time and materials basis, if and when requested. Further, IBM will provide and maintain all necessary hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Managed Cloud Delivery Services. Authorized Users will be able to access the software at the internet uniform resource locator as published by using a computer equipped with an internet connection and a modern web browser, the specifications to be determined at the time the managed application is initiated.

A Non-production application is an application deployment distinct from the production application platform. The non-production application platform may be located at a different facility than the production application platform at our discretion. The non-production application platform is primarily intended for use as a platform for testing, staging, training or QA, at Client's discretion.

2. IBM Emptoris Sourcing on Cloud Burst Mode

The IBM SaaS provides the capability to increase capacity needs higher than the standard server configuration by adding additional servers to the configuration.

3. IBM Emptoris Managed Cloud Edge Delivery Web Application Accelerator

IBM Emptoris Managed Cloud Delivery Edge Delivery Web Application Accelerator provides the following functionality:

- dynamic mapping system directs user requests for secure application content to an optimal server;
- route optimization technology identifies the optimal path back to the origin infrastructure to retrieve dynamic application content;
- a transport protocol transparently optimizes communications between the server and the point of origin;
- the server retrieves the requested application content and returns it to the user over secure optimized connections.

4. IBM Emptoris Managed Cloud Delivery Virtual Private Network Connection

IBM Emptoris Managed Cloud Delivery Virtual Private Network Connection provides an encrypted site to site connection between Client's network end point and Emptoris SaaS Hosting end point. All traffic flowing between these two devices is encrypted in a secure manner. Data is encrypted from the sending

end and encrypted at the receiving end using industry standard encryption keys and methods. An additional subscription is required if a Virtual Private Network Connection is required for Non-Production Instances.

5. IBM Emptoris Strategic Supply Management Managed Cloud Delivery Encrypted Database

IBM Emptoris Strategic Supply Management Managed Cloud Delivery Encrypted Database provides encryption of Client data stored in a dedicated database instance using an encryption key for the following IBM SaaS offerings if they are specified on the Transaction Document:

- IBM Emptoris Contract Management Managed Cloud Delivery
- IBM Emptoris Contract Management Sell Side Managed Cloud Delivery
- IBM Emptoris Contract Management Buy Side Managed Cloud Delivery
- IBM Emptoris Contract Management for Commercial Banking Agreements Managed Cloud Delivery
- IBM Emptoris Sourcing Managed Cloud Delivery

Encryption keys are keys that are stored in a key safe and each database instance requires dedicated unique keys. No keys are shared even though the database instances are contained on shared hardware. IBM Emptoris Contract Management Managed Cloud Delivery, IBM Emptoris Contract Management Buy Side Managed Cloud Delivery, IBM Emptoris Contract Management Sell Side Managed Cloud Delivery, and IBM Emptoris Contract Management for Commercial Banking Agreements Managed Cloud Delivery do not store attachments in the database and therefore attachment data is not encrypted.

Client must purchase an Instance of IBM Emptoris Strategic Supply Management Managed Cloud Delivery Encrypted DB for each production and Non-Production Instance for which Client wants the data encrypted.

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:
 - A scheduled or announced maintenance outage;
 - Events or causes beyond IBM’s control (e.g., natural disaster, internet outages, emergency maintenance, etc.);
 - Problems with Client’s or a third party’s applications, equipment, or data;
 - Client’s failure to adhere to required system configurations and supported platforms for accessing the IBM SaaS; or
 - 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 24 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 in 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 ten percent (10%) of one twelfth (1/12th) of the annual charge paid by Client to IBM for the 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)
< 99.0%	2%
< 97.0%	5%
< 95.0%	10%

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% Achieved Service Level 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.