



IBM Terms of Use – SaaS Specific Offering Terms

IBM Emptoris Contract Management on Cloud

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/sladb.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 Contract Management on Cloud
- IBM Emptoris Contract Management on Cloud Read Only
- IBM Emptoris Contract Management on Cloud for Non-Production Environment
- IBM Emptoris Contract Management Buy Side Premium on Cloud
- IBM Emptoris Contract Management Buy Side on Cloud
- IBM Emptoris Contract Management Buy Side on Cloud Read Only
- IBM Emptoris Contract Management Buy Side on Cloud for Non-Production Environment
- IBM Emptoris Contract Management Buy Side on Cloud Advanced Add-On
- IBM Emptoris Contract Management Sell Side Premium on Cloud
- IBM Emptoris Contract Management Sell Side on Cloud
- IBM Emptoris Contract Management Sell Side on Cloud Read Only
- IBM Emptoris Contract Management Sell Side on Cloud for Non-Production Environment
- IBM Emptoris Contract Management Sell Side on Cloud Advanced Add-On
- IBM Emptoris Contract Management for Commercial Banking Agreements on Cloud
- IBM Emptoris Contract Management for Commercial Banking Agreements Read Only
- IBM Emptoris Contract Management for Commercial Banking Agreements on Cloud for Non-Production Environment

2. Charge Metrics

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

- a. Authorized User is a unit of measure by which the IBM SaaS may be obtained. An Authorized User is a unique person who is given access to IBM SaaS. Client must obtain separate, dedicated entitlements for each Authorized User accessing the IBM SaaS offering in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document. An entitlement for an Authorized User is unique to that Authorized User and may not be shared, nor may it be reassigned other than for the permanent transfer of the Authorized User entitlement to another person.
- b. 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 Proof of Entitlement (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 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.

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 IBM program provided as part of the IBM SaaS. IBM will work with Client to migrate each of its Instances of the IBM SaaS to a supported version of the 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 and is only available if Client has purchased at least one Non Production Instance. Disaster recovery is only available for production Instances. 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.

6.10 Cumulative Entitlements Requirement

Client must obtain an Instance entitlement, as well as sufficient Authorized User entitlements to cover the IBM SaaS users of IBM Emptoris Contract Management on Cloud, IBM Emptoris Contract Management Buy Side Premium on Cloud, IBM Emptoris Contract Management Buy Side on Cloud, IBM Emptoris Contract Management Sell Side Premium on Cloud, IBM Emptoris Contract Management Sell Side on Cloud, and IBM Emptoris Contract Management for Commercial Banking Agreements on Cloud.

6.11 Entitlements Not Required

Administrative users are included in the IBM SaaS offering. Client is not required to obtain Authorized User entitlements for administrative users of the IBM SaaS.

An administrative user is authorized to create and manage the following: clause templates, contract templates, interview design, approval rules, notification templates, line definitions, term definitions, organizations, data sources, groups, roles, workflows, categories, and master supplier records.

If an administrative user does non-administrative activities they will require an entitlement.

Any external user (users associated with external third parties with whom Client is engaged) may be provided access to the IBM SaaS and are considered Guest Users. Client is not required to obtain

Authorized User entitlements for Guest Users of the IBM SaaS. Guest Users are Client's responsibility, including but not limited to a) any claims made by the Guest Users relating to the IBM SaaS; b) charges incurred by the Guest User; or c) any misuses of the IBM SaaS by these Guest Users.

Appendix A

IBM Emptoris Contract Management on Cloud provides a repository where Client can store Client's executed contract documents.

1. IBM SaaS Features

Based on the Transaction Document Client will receive the features as further described below. The Base Features allow Client to:

- Upload contracts and the product will then associate the contract with appropriate meta-data (i.e. terms)
- Search and report on data to find the contracts of interest as needed.
- Receive alerts for upcoming events such as contract expirations so that the appropriate action can be taken

The Advanced Features allow Client to:

- Negotiate contracts
- Track obligations on the contract post execution
- Amend executed contracts
- Utilize contract templates and clause templates to ensure standards are being adhered to
- Use a Self-service Wizard to provide an easy way to guide novice users to create contracts
- Capture and collaborate on more complex attributes of a contract. For example, line definitions are available to track tabular information in a contract
- Manage contract approvals and ad-hoc review are available for effective collaboration
- Integrate with other systems using web services.

2. IBM Emptoris Contract Management on Cloud

IBM Emptoris Contract Management on Cloud allows Client to manage contracts associated with:

- Sales contracts with clients
- Procurement contracts such as procurement of goods, services, rental and lease agreements.
- NDAs with any party can also be managed

With the IBM SaaS Client can use all of the Base Features and Advanced Features.

3. IBM Emptoris Contract Management Buy Side Premium on Cloud

IBM Emptoris Contract Management Buy Side Premium on Cloud allows Client to manage contracts associated with procurement, such as procurement of goods, services, rental and lease agreements. Associated contracts that support the procurement function such as NDAs can also be managed. With the IBM SaaS Client can use all of the Base Features and Advanced Features.

4. IBM Emptoris Contract Management Sell Side Premium on Cloud

IBM Emptoris Contract Management Sell Side Premium on Cloud allows Client to manage contracts associated with selling to a client, such as sales contracts and NDAs with clients. With the IBM SaaS Client can use all of the Base and Advanced Features.

5. IBM Emptoris Contract Management Buy Side on Cloud

IBM Emptoris Contract Management Buy Side on Cloud allows Client to manage contracts associated with procurement, such as procurement of goods, services, rental and lease agreements. Associated contracts that support the procurement function such as NDAs can also be managed. With the IBM SaaS Client can use all of the Base Features.

6. IBM Emptoris Contract Management Sell Side on Cloud

IBM Emptoris Contract Management Sell Side on Cloud allows Client to manage contracts associated with selling to a client, such as sales contracts and NDAs with clients. With the IBM SaaS Client can use all of the Base Features.

7. IBM Emptoris Contract Management For Commercial Banking Agreements on Cloud

IBM Emptoris Contract Management for Commercial Banking Agreements on Cloud allows Client to manage contracts and other documents associated with commercial or wholesale banking agreements. With the IBM SaaS Client can use all of the Base Features and Advanced Features.

8. Optional Features

8.1.1 Read Only Offerings

Included in this category are the following offerings:

- IBM Emptoris Contract Management on Cloud Read Only
- IBM Emptoris Contract Management Buy Side on Cloud Read Only
- IBM Emptoris Contract Management Sell Side on Cloud Read Only
- IBM Emptoris Contract Management For Commercial Banking Agreements on Cloud Read Only

Read Only users are permitted to access and search repositories, view reports, participate in workflows as approvers or routers, receive and respond to evaluations, receive and update status of an assigned task, and receive risk alerts. Read Only users can also create contracts via the wizard functionality (such as when the wizard is initiated from external applications like Salesforce.com).

8.1.2 IBM Emptoris Contract Management Sell Side on Cloud Advanced Add-On

This option allows Client to use all of the Advanced Features with the IBM Emptoris Contract Management Sell Side on Cloud Instance. Client must have an existing IBM Emptoris Contract Management Sell Side on Cloud Subscription to purchase this option.

8.1.3 IBM Emptoris Contract Management Buy Side on Cloud Advanced Add-On

This option allows Client to use all of the Advanced Features with the IBM Emptoris Contract Management Buy Side on Cloud Instance. Client must have an existing IBM Emptoris Contract Management Buy Side on Cloud Subscription to purchase this option.

8.1.4 Non-Production Environment Offerings

Included in this category are the following offerings:

- IBM Emptoris Contract Management on Cloud for Non-Production Environment
- IBM Emptoris Contract Management Buy Side on Cloud for Non-Production Environment
- IBM Emptoris Contract Management Sell Side on Cloud for Non-Production Environment
- IBM Emptoris Contract Management For Commercial Banking Agreements on Cloud for Non-Production Environment

These offerings can be used as part of Client's non-production activities, including but not limited to testing, performance tuning, fault diagnosis, benchmarking, staging, quality assurance activity and/or developing internally used additions or extensions to the IBM SaaS offering using published application programming interfaces. A separate Non-Production Environment must be purchased for each production Instance purchased if Client requires non-production activities for a specific type of contract.

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: 10px 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.