



IBM Terms of Use – SaaS Specific Offering Terms

IBM Services Procurement on Cloud

The Terms of Use ("ToU") are 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: <http://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms/>.

The complete agreement between the parties consists of 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 (the "Agreement") and the ToU. Should a conflict arise between the General Terms and these SaaS Specific Offering Terms, these SaaS Specific Offering Terms will prevail over the General Terms.

Customer may use the IBM SaaS only if Customer first accepts the ToU. By ordering, accessing or using the IBM SaaS Customer agrees to the ToU. By clicking an "Accept" button after being presented with these SaaS Specific Offering Terms, you are also accepting the General Terms.

IF YOU ARE ACCEPTING THE ToU ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU. IF YOU DO NOT AGREE WITH THE ToU OR DO NOT HAVE FULL AUTHORITY TO BIND CUSTOMER TO THE ToU THEN DO NOT IN ANY MANNER USE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED AS PART OF THE IBM SAAS.

Part 1 – IBM Terms

1. IBM SaaS

The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:

- IBM Emptoris Services Procurement on Cloud
- IBM Emptoris Services Procurement on Cloud for Non-Production Environment

2. Charge Metrics

The IBM SaaS offering is sold under the following charge metric(s):

- 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 Customer's Proof of Entitlement (PoE) or Transaction Document.
- b. Million Spend Conversion Units (MSCUs) are a unit of measure by which the IBM SaaS can be obtained. A Spend Conversion Unit is a currency-independent measure of a Spend amount relevant to the licensing of the IBM SaaS. Currency-specific Spend amounts must be converted into MSCUs 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 MSCUs required to cover the amount of Spend processed or managed by the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document. For the purpose of Million Spend Conversion Unit entitlements of IBM SaaS, Spend is the total amount disbursed on procurement of off-catalog or non-direct services including but not limited to temporary labor, contingent labor, consulting services, legal services, marketing services, IT services, print services and outsourced services.

3. Charges and Billing

3.1 Billing Options

The amount payable for the IBM SaaS offering is specified in a Transaction Document. The billing options for the IBM SaaS subscription fees are as follows:

- a. Entire commitment amount upfront
- b. Monthly (in arrears)
- c. Quarterly (upfront)
- d. Annually (upfront)

The selected billing option will be valid for the length of the term specified in a PoE or a 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 Partial Month Charges

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

3.3 Overage Charges

The IBM SaaS will monitor the amount of Million Spend Conversion Units used. If Customer's actual use exceeds the entitled amount of Million Spend Conversion Units designated in Customer's PoE or Transaction Document, Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document.

4. Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM will 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.

Customer is responsible for ensuring that each IBM SaaS User protects their Account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS offering on Customer's behalf.

5. Renewal of a Subscription Period

5.1 Automatic Renewal of a Subscription Period

If Customer's PoE designates the subscription renewal as automatic, 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 EITHER A ONE YEAR TERM OR THE SAME DURATION AS THE ORIGINAL TERM 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.

5.2 Continuous Billing

If Customer's PoE designates the subscription renewal as billing will continue following the end of the Subscription Period, Customer will continue to have access to the IBM SaaS and will be billed for usage of the IBM SaaS on a continuous billing basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer must provide IBM with ninety (90) days written notice requesting cancellation of their IBM SaaS. Upon cancellation of Customer's access to the IBM SaaS, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

5.3 Customer Renewal Required

If Customer's PoE designates the subscription renewal as one that terminates, the IBM SaaS offering will not renew at the end of the initial Subscription Period. In order to continue use of the IBM SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the IBM SaaS. Please contact an IBM sales representative or Customer's reseller, as applicable, to obtain a new IBM SaaS subscription.

6. Technical Support

Technical support is provided for the IBM SaaS offering during the Subscription Period. Such technical support is included with the IBM SaaS offering and is not available as a separate offering.

Technical Support information can be found at: <http://www-01.ibm.com/software/procurement-solutions/emptoris/support/>.

E-mail and phone support access is also described at the technical support web site.

7. IBM SaaS Offering Additional Terms

7.1 Non-Production Limitation

If the IBM SaaS offering is designated as "Non-Production", the IBM SaaS offering can only be used as part of the Customer'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. Customer is not authorized to use any part of the IBM SaaS offering for any other purposes without acquiring the appropriate production entitlements.

7.2 Third Party Site and 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 offering, 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.

7.3 Coordinated Updates

Notwithstanding the terms regarding Updates as defined in Section 4 of the General Terms, IBM and Customer will work together to determine when certain significant Updates will be installed.

IBM Terms of Use

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

5.1 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 either a one year term or the same duration as the original term, 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

5.1 Automatic Renewal of a Subscription Period

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

BRAZIL

5.1 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

5.1 Automatic 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 5.1 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

BANGLADESH, BHUTAN, AND NEPAL

5.1 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 5.1 Automatic Renewal of a Subscription Period:

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for either a one year term or the same duration as the original term, 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.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

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

5.1 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 5.1 Automatic Renewal of a Subscription Period:

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for either a one year term or the same duration as the original term, 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.

Appendix A

1. Features and Components

Services Procurement on Cloud provides a platform for organizational users to work with their supplier community to manage their request and proposal process for the procurement of services, to manage the work order process to track and assign budgets to cost centers, to track these services via receipts and timesheets, and to receive and approve invoices for payment for these services. Workflow and order management capabilities allow users to track and maintain compliance across the organization for rates, spend, labor laws, and organizational policies.

2. IBM Emptoris Services Procurement on Cloud

Master Agreements – Enables users to setup Master Agreements within the application that contains rate cards and payment. Spend can then be tracked against these terms and conditions to ensure compliance across the organizations and categories that the agreements apply to.

Projects – Project management capabilities allow users to track and assign resources to a project. Users can monitor the overall status and budget implications of multiple orders and requests associated to a single project.

Requests – Request and proposal management module enables users to publish requests to their supplier community and receive corresponding proposals that allow them to compare the options related to the procurement of temporary labor or delivery based services. Approval and sourcing rule capabilities ensure that all requests published are compliant with organizational procurement policies.

Orders – Order management capabilities coupled with approval workflow support delivery based or temporary labor based procurement that enable users to manage simple orders or blanket orders that can be sourced either directly with a preferred supplier or competitively through a selected proposal. Change order capabilities enable changes in the budget, specifications, or order scope.

Time and Expense – Capabilities to enable temporary labor contractors to enter their time and expenses that tracked against the contracted rates.

Invoices – Enable the creation and approval of invoices for all billable and accrued services rendered by the supplier and any applicable taxes.

Suppliers – Enables the management of suppliers and the maintenance of their capabilities and information.

System Administration – Administrative module that supports the management of templates, approval rules, organization policies, security, role-based authorizations, and system configurations to enable different process flows

Security – Utilize role-based security to limit user access and visibility.