



IBM Terms of Use – SaaS Specific Offering Terms

IBM Emptoris Program 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 Program Management on Cloud
- IBM Emptoris Program Management on Cloud Read Only
- IBM Emptoris Program Management on Cloud for Non-Production Environment
- IBM Emptoris Program Management on Cloud Essential Premium Support
- IBM Emptoris Program Management on Cloud Premier Premium Support
- IBM Emptoris Program Management Request Manager Implementation Service Engagement
- IBM Emptoris Program Management Additional Request Type Add-On Service Engagement
- IBM Emptoris Program Management Project Manager Implementation Service Engagement
- IBM Emptoris Program Management Additional Project Template Add-On Service Engagement Remotely Delivered Service
- IBM Emptoris Program Management Administrator Enablement Service Engagement

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. Client must obtain separate, dedicated entitlements for each unique Authorized User given access to the IBM SaaS offering in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. Sufficient entitlements must be obtained to cover the number of Authorized Users given access to the IBM SaaS during the measurement period specified in Client's Proof of Entitlement (PoE) or Transaction Document.
For the purpose of this IBM SaaS, 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. **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.
- c. **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.

3.2 Remote Service Charges

Remote Services and maintenance subscriptions are delivered either remotely or at an IBM location. Project plans, and project documentation are delivered as IBM owned documents with unlimited right for the Client to copy and re-use for its business activities. IBM will assign delivery resources within 20 business days of order receipt and will provide weekly project status reports. Remotely delivered Service Engagements are expected to be complete within 150 days of start of the service activity.

3.3 Verification

Client will i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, and ii) promptly order and pay for required entitlements at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of the IBM SaaS and for two years thereafter.

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

IBM will make available the IBM Software as a Service Support Handbook which provides technical support contact information and other information and processes. Technical support is offered with the IBM SaaS and is not available as a separate offering. The following severities are used to track support tickets for the IBM SaaS:

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. Note: We will work with you 24X7 to resolve critical problems providing you have a technical resource available to work during those hours.	Within 1 hour	24X7
2	Significant business impact: A service business feature or function of the service is severely restricted in its use or you are 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

6. IBM SaaS Offering Additional Terms

6.1 General

Client agrees IBM may publicly refer to Client as a subscriber to the IBM SaaS in a publicity or marketing communication.

6.2 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 SaaS 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.

6.3 Data

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 or tailoring interactions with Client. Client confirms that Client 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.

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: Canada, India, Ireland, 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 and support of the IBM SaaS. With respect to the transfer of European Economic Area of 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 Backup

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 seven days for non-production Instances. 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 is not obligated to recover the deleted data and, if available, may charge for such effort.

6.6 IBM SaaS Expiration

Before expiration or 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 extraction services are available under a separate agreement. Upon receiving a support request from Client within 30 days of the IBM SaaS expiration or termination date, IBM will return to Client an electronic copy of Client's content in the native application format.

6.7 IBM SaaS Upgrades

IBM will install and configure software upgrades to the production or non-production IBM SaaS Instances at a mutually agreed time, subject to scheduling availability during business hours in the Client's time zone. Client may request scheduling during weekends based on scheduling availability for subscriptions to IBM Emptoris Program Management on Cloud Essential or IBM Emptoris Program Management on Cloud Premier Premium Support. IBM Emptoris Program Management on Cloud Premier Premium Support subscribers receive priority for scheduling during weekend upgrade scheduling.

IBM will provide notice 12 months prior to the termination of support for the version of the software provided as part of the IBM SaaS. IBM will work with Client to migrate each of Client's Instances of the IBM SaaS to a supported version of the software prior to the termination of support date. Client will be responsible for the migration costs. If the migration to a supported version of the software is not

completed within the notice period, other than as a result delays caused solely by IBM or its subcontractors, IBM may terminate this agreement upon 30 days written notice to Client.

6.8 Database Refreshes

IBM will replicate production database contents to Client's non-production environment once per quarter (or up to four times per quarter for premium support), for each non-production system purchased. Refresh services will be performed at a mutually agreed time, subject to scheduling availability.

6.9 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.

6.10 Disaster Recovery

To the extent Client is running on a current, supported version of the IBM SaaS, if Client has purchased at least one non production environment, in the event of a major system disruption caused by a natural disaster (e.g. fire, earthquake, flood, etc.), disaster recovery will be accomplished by using commercially reasonable efforts to restore Client's production data to one of Client's non-production environments with a recovery objective of 72 hours. This is not a warranty and no service level agreement is available.

6.11 Cumulative Entitlements Requirement

Clients must obtain an Instance entitlement, as well as sufficient Authorized User entitlements to cover the IBM SaaS users of IBM Emptoris Program Management on Cloud.

6.12 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 set application and data permissions for a spend role/group, modify application properties, configure dimensions, measures and attributes and configure the strategic supply management platform internal and external users, organizations, data sources, groups, roles, workflows, categories, and master supplier records.

Appendix A

1. IBM SaaS Description

IBM Emptoris Program Management on Cloud provides capabilities for end-users to gain real-time program visibility and actively manage a variety of program management activities. Configurable forms and workflows allow end-users to address and manage key program tasks. This Cloud Service offering allows end users to proactively monitor, measure and track savings and program objectives through dashboards and report capabilities. This offering includes the following:

- a. Task management - Capabilities to create tasks, assign roles, establish alerts and notifications, as well as link to parent projects. Users can also create task milestones and link those to related sourcing events and contracts. Rules-based statuses provide task updates and insight to whether a project is on or off its timetable for completion;
- b. Program and project Management - Program and project management capabilities allow users to leverage templates to create projects composed of multiple tasks and assign teams and resources to those projects. Users can monitor projects and programs and gain visibility into issues and “red-flags”, as well as track savings by project or program;
- c. Dashboards and reports - Provides visibility into procurement initiatives in one central location, through custom dashboards and reports. Allows the user to track progress and report by task or milestone;
- d. Savings tracking - Records savings achieved by project or task and automatically roll-up approved savings to the project and program level. Provides options to establish approval workflows for savings programs and reporting;
- e. Issue tracking - Tracks issues and risks that impact workflows, programs, and projects. Provides insight into key milestones as they are achieved and allows users to monitor bottlenecks. Automatically adjusts task status based on the issue/risk severity and prevents tasks with open issues from closing;
- f. Resource management – Provides visibility into resource usage and tracks assigned tasks and task days per user. Reports on average task duration, completions and other Key Performance Indicators (KPI);
- g. Workflow management - Allows users to create process workflows using a graphical modeler, and assign alerts and notifications;
- h. Security - Utilizes role-based security limits by program, project, task or milestone to manage specific user roles and access; and
- i. Request management - Allows users to create requests based upon configured forms. Request Management utilizes configured Workflow Management to guide and direct requests to appropriate users.

The IBM SaaS will enable Client to input and manage content containing information which may be considered personal information (PI) under applicable privacy laws:

- contact information (name, address, email, phone number, staff ID, cost center)
- technical identifiers (username, password, IP addresses, MAC addresses).

This IBM SaaS is not designed to any specific security requirements for sensitive personal information, protected health information, or other regulated content. Client is responsible to determine if this IBM SaaS meets Clients needs with regard to the type of content Client uses in connection with the IBM SaaS. Under no circumstances may Client use this IBM SaaS to collect, process or store protected health information

The IBM SaaS does encrypt content during data transmission between the IBM network and the network access point or end user machine. The IBM SaaS does encrypt content when at rest awaiting data

transmission if the Client is using version 10.1.1 or higher of the IBM SaaS, otherwise, Client is responsible to encrypt content prior to adding to the IBM SaaS.

2. Optional Features

2.1 IBM Emptoris Program Management Read Only

Clients are permitted to access and search program management and request management repositories, view reports, create requests, participate in workflows as approvers or routers, receive and respond to evaluations, receive and respond to tasks and/or requests, receive and update status of an assigned task, and receive risk alerts.

2.2 IBM Emptoris Program Management on Cloud for Non-Production Environment

This offering can be used as part of the 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 Cloud Service offering using published application programming interfaces.

3. Premium Support Offerings

3.1 IBM Emptoris Program Management on Cloud Essential Premium Support

This offering includes up to four database refreshes per quarter, an improved target Service Level Agreement (SLA) of 99.7%, and the scheduling of upgrades over a weekend instead of during business hours.

IBM Emptoris Program Management on Cloud Essential Premium Support also provides an Accelerated Value Leader (AVL). The AVL may be an IBM employee or IBM subcontractor and will perform the following tasks:

- Problem Management - IBM will provide regular status updates, facilitate communications between Client and IBM regarding problems, drive resolution of open issues, and provide monthly management reports on activity.
- Proactive Support - IBM will provide the named contact who will provide guidance and assistance with the Cloud Service to help reduce or prevent problems from occurring in the Cloud Service. These activities may include, but not be limited to, alerting Client to authorized program analysis reports (called APARs) experienced by other Clients, assisting with development of risk mitigation plans when changes such as upgrades are proposed for Client's environment, participating in product-life cycle and maintenance planning, and providing periodic reporting.
- Skills Sharing - IBM will facilitate Client skills development related to the Cloud Service by providing invitations to briefings by senior technical specialists and via early access to technical information.

Client will:

- designate a Primary Contact responsible for the receipt and dissemination of support ticket information, updates, fixes, and the prioritization of outstanding support tickets as well as reviewing Incident status reports before contacting IBM to request assistance;
- communicate contact details of the Primary Contact at commencement of the Cloud Service and communicate any changes of Primary Contact in writing to IBM with 30 days advance notice via the AVL; and
- participate in conference calls hosted by the AVL.

3.2 IBM Emptoris Program Management on Cloud Premier Premium Support

This offering includes all of the characteristics of IBM Emptoris Program Management Essential Premium Support and the following:

- Annual Health Check Remotely Delivered Service - IBM will provide a health check assessment of the Client configuration, deployment, and usage of the Cloud Service. The assessment will include findings and recommendations for improvement for use of the Cloud Service. As part of this service IBM will review original documentation for Client's implementation, review open APARs, interview end users, review Client's configuration of the Cloud Service, provide an assessment of integrations and customs for each module, and deliver an analysis report, with findings, observations and recommendations for improvement.

- Upgrade Remotely Delivered Service – IBM will provide upgrade services for Clients using version 10.0 or higher of the Cloud Service to upgrade to a later release in the same version. Client must subscribe to a non-production environment Cloud Service, read all new release documentation, create and own the upgrade project plan and submit the appropriate support tickets for the Cloud Service to be upgraded. IBM will provide guidance for the Client project and user enablement plans, review and control of Cloud Service configuration files, review of new features, and guidance to Client for testing of the upgrade.
- Custom Code Installation – IBM will provide for the installation of custom code created by IBM professional services (pursuant to a separate agreement between the parties) as part of the Cloud Service.
- Quarterly Business Reviews – IBM will engage with the Client to review the Client's Cloud Service, including Client adoption, current actions, issues, and future plans.
- Priority scheduling for Weekend Upgrades – Client will receive preference for scheduling weekend upgrades with times reserved for Client and other Clients that purchase IBM Emptoris Program Management on Cloud Premier Premium Support.
- External Code – Client must subscribe to IBM Emptoris Program Management on Cloud Premier Premium Support in order to have custom artifacts installed in the Cloud Service such as user exits, adapters, or other external processes.

4. Remotely Delivered Services

In order for IBM to deliver the Service Engagement, Client will:

- designate a Client point of contact to whom all communications relative to the Cloud Service will be addressed, and who will have the authority to act on Client's behalf in all matters regarding the Cloud Service; serve as the interface between IBM and all Client departments participating in the Cloud Service; participate in project status meetings, obtain and provide information, data, and decisions within three (3) working days of IBM's request; help resolve and escalate Cloud Service issues within Client's organization as needed;
- provide IBM access to the Client's Cloud Services;
- cooperate towards completing Client tasks and activities;
- acknowledge and agree that these Services are designed to support one business area implementing the software, with one set of requirements. The Cloud Service supports deployments for multiple business areas, but additional areas may require additional Service Engagements;
- provide Client's business requirements relative to the Service Engagements purchased;
- be responsible for the development and implementation of test plans, corresponding test scripts, and associated data;
- be responsible for development of end user business procedures and development and delivery of enablement services to the end users; and
- consult with IBM prior to engaging third parties whose work may affect IBM's ability to provide the Services, and be responsible for the management and performance of the third parties.

4.1 Service Engagements

4.1.1 IBM Emptoris Program Management Request Manager Implementation Service Engagement

IBM will provide services to implement a request management capability with Client metadata, request workflow, and associated notifications for one request type. IBM will conduct an 8-hour design workshop, to address Client requirements and the following elements of the one request type: meta-data requirements, workflow requirements, notification requirements, user role, security design and organization to be designated for the request, and reporting requirements. IBM will provide up to 16 hours of administrator enablement for configuration of the request constructs, and up to eight hours of end user training content development. IBM will build one prototype in a non-production environment based on the design approach. IBM will build a limited set of configurations into the production Cloud Service to support enablement for Client team to finish the build activity. This will include one request type, up to 10 additional Client specific meta-data fields associated with the request, up to five workflows for the request, with up to 15 total decision points across the workflows, up to three notifications for the request, and up to two user roles with security configuration per Client requirement. IBM will provide support to Client for testing activities, including tracking of software issues and escalation management for IBM

severity 1 support tickets. The IBM Emptoris Strategic Supply Management Master File Implementation Service Engagement must be purchased and completed concurrently with this service or completed before this service is delivered.

4.1.2 IBM Emptoris Program Management Additional Request Type Add-On Service Engagement

IBM will provide services to configure one additional Request type in the Cloud Service based on the delivery of the IBM Emptoris Program Management Request Manager Implementation Service Engagement. The IBM Emptoris Program Management Request Manager Implementation Service Engagement must be purchased and completed concurrently with this service or completed before this service is delivered.

4.1.3 IBM Emptoris Program Management Project Manager Implementation Service Engagement

IBM services to implement a project management capability with Client metadata, project workflow, and associated notifications, for one project template. IBM will conduct an eight hour design workshop, to address Client requirements and the elements of the one project template: project tasks, meta-data requirements, workflow requirements, notification requirements for the project, user role, security design and organization to be designated for the project, and reporting requirements for the project. IBM will provide up to 16 hours of Administrator enablement for configuration of the project constructs, and up to eight hours of end user training content development. IBM will build one prototype in a non-production environment based on the design approach. IBM will directly build a limited set of configurations into the production Cloud Service to support enablement for Client team to finish the build activity. This will include one project template, up to 10 additional Client specific meta-data fields associated with the Project, up to five workflows for the project, with up to 15 total decision points across the workflows, up to three notifications for the project, and up to two user roles with security configuration per Client requirement. IBM will provide support to Client for testing activities, including tracking of software issues and escalation management for IBM severity 1 support tickets. The IBM Emptoris Strategic Supply Management Master File Implementation Service Engagement must be purchased and completed concurrently with this service or completed before this service is delivered.

4.1.4 IBM Emptoris Program Management Additional Project Template Add-On Service Engagement Remotely Delivered Service

IBM will provide services to configure one additional project template in the Cloud Service based on the delivery of the IBM Emptoris Program Management Project Manager Implementation Service Engagement. The IBM Emptoris Program Management Project Manager Implementation Service Engagement must be purchased and completed concurrently with this service or completed before this service is delivered.

4.1.5 IBM Emptoris Program Management Administrator Enablement Service Engagement

IBM will provide enablement services to Client administrators for the Cloud Service. This will include functional reviews of the administrative functions, best practice discussions, hands on experience performing the administrator functions on a test site, and responding to specific Client questions during the course of the enablement session. IBM will conduct an enablement workshop for the administrator functions of the Cloud Service including request types and project templates, with associated meta-data, workflow, user roles and security, reporting, and notification configuration functions. The workshop will include a functional overview and Client user hands on exercises for familiarization of the software. The IBM Emptoris Program Management Request Manager Implementation Service Engagement or the IBM Emptoris Program Management Project Manager Implementation Service Engagement must be purchased and completed concurrently with this service or completed before this service is delivered.



Appendix B

IBM provides the following availability service level agreement (“SLA”) for the IBM SaaS as specified in a PoE. The SLA is not a warranty. The SLA is available only to Client and applies only to use in production environments.

1. Availability Credits

A support ticket claim for failure to meet an SLA must be submitted within thirty business days after the event that has impacted the IBM SaaS availability. Compensation for a valid SLA claim will be a credit against a future invoice for the Cloud Service based on the duration of time during which production system processing for the Cloud Service is not available (“Downtime”). Downtime is measured from the time Client reports the event until the time the Cloud Service is restored and does not include time related to a scheduled or announced maintenance outage; causes beyond IBM’s control; problems with Client or third party content or technology, designs or instructions; unsupported system configurations and platforms or other Client errors; or Client-caused security incident or Client security testing. IBM will apply the highest applicable compensation based on the cumulative availability of the Cloud Service during each contracted month, as shown in the table below. The total compensation with respect to any contracted month cannot exceed 10 percent of one twelfth (1/12th) of the annual charge for the Cloud Service.

For bundled IBM SaaS (individual IBM SaaS packaged and sold together as a single offering for a single combined price), the compensation will be calculated based on the single combined monthly price for the bundled IBM SaaS, 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 at a given time.

2. Service Levels

Availability of the IBM SaaS during a contracted month

Availability during a contracted month	Compensation (% of monthly subscription fee* for contracted month that is the subject of a claim)
<99.7% for Clients that purchase Premium Support	2%
<99.0% if Premium Support is not purchased	2%
< 97.0%	5%
< 95.0%	10%

* If the Cloud Service was acquired from an IBM Business Partner, the monthly subscription fee will be calculated on the then-current list price for the Cloud Service in effect for the contracted month which is the subject of a claim, discounted at a rate of 50%.

Availability, expressed as a percentage, is calculated as the total number of minutes in a contracted month minus the total number of minutes of Downtime in a contracted month divided by the total number of minutes in a contracted month.

Example: 500 minutes total Downtime during contracted month

<p>43,200 total minutes in a 30 day Contracted Month -- 500 minutes Downtime = 42,700 minutes</p> <hr/> <p>43,200 total minutes</p>	<p>= 2% Availability Credit for 98.8% availability during the contracted month</p>
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