



IBM Terms of Use - SaaS Specific Offering Terms

IBM Emptoris Sourcing 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: 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. Purpose

This ToU is for the following IBM SaaS offerings:

- IBM Emptoris Sourcing on Cloud
- IBM Emptoris Sourcing on Cloud Read Only
- IBM Emptoris Sourcing on Cloud for Non-Production Environment
- IBM Emptoris Sourcing on Cloud Advanced Add-On
- IBM Emptoris Sourcing on Cloud Burst Option for EchOSTM
- IBM Emptoris Sourcing on Cloud Event Monitoring

2. Charge Metrics

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

- a. Event is a unit of measure by which the IBM SaaS can be obtained. An Event is a unique report generated from the processing of an email, email list, html code, domain or IP address by the IBM SaaS. Sufficient entitlements must be obtained to cover the number of Events used during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.
- b. 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. Customer 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 Customer'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.
- 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 Customer's Proof of Entitlement (PoE) or Transaction Document.

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 offering will monitor the number of Events used for the IBM Emptoris Sourcing on Cloud Event Monitoring. If Customer's actual use exceeds the entitled amount of Events 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.

3.4 On Demand

On-Demand options will be invoiced in the month the on-demand option is made available to the Customer and will be invoiced as set forth in the 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. On Demand Services

5.1 IBM Emptoris Sourcing on Cloud Event Monitoring

IBM Emptoris Sourcing on Cloud Event Monitoring may be obtained on an on-demand basis, and will be billed based on the number of Events in a given month.

- a. Support specialists will manage the tactical responsibilities associated with all event types that can be configured in the system.
- b. Tactical responsibilities include:
 - (1) Help creating an event as defined above;
 - (2) Web based supplier training up to 90 minutes per event;
 - (3) Help running the event.

Specific information regarding Event Monitoring can be found at:

http://public.dhe.ibm.com/software/commerce/emptoris/EMS_Process_Document.pdf

6. Renewal of a Subscription Period

6.1 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.

6.2 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.

6.3 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.

7. 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.ibm.com/software/procurement-solutions/emptoris/support/>

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

8. IBM SaaS Offering Additional Terms

8.1 Read Only Limitation

If the IBM SaaS offering is designated as "Read Only", Customer is only permitted to view, monitor, search, run reports and score the events to which they have been invited.

8.2 Non-Production Limitation

If the IBM SaaS is designated as "Non-Production", the IBM SaaS offering can only be used as part of the Customers 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.

8.3 Cumulative Entitlements Requirement

Customers must obtain an Instance entitlement, as well as sufficient Authorized User entitlements to cover the IBM SaaS Users of IBM Emptoris Sourcing on Cloud.

8.4 Entitlements Not Required

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

An administrative user is authorized to create the following: internal or external users, internal or external organizations, currency tables, system level templates, categories, data sources, groups, roles and workflows. An administrative user may also manage the following: notifications, system level configurations, categories and master supplier records.

Any external user (users associated with external third parties with whom Customer is engaged) may be provided access to the IBM SaaS offering. Customer is not required to obtain Authorized User entitlements for external users of the IBM SaaS offering. However, Customer will remain responsible for the actions of any external user whom Customer authorizes to access the IBM SaaS offering.

8.5 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.

8.6 Official Journal of the European Union (OJEU) Notices

If a customer utilizes the OJEU feature where the sourcing system transmits data to the Tenders Electronic Daily (TED) site, the Customer is responsible for applying to the OJEU and passing the GAMMA testing. The data transmission is solely between the Customer 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.

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

6.1 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 a one year term at the same price and billing frequency, 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

6.1 Automatic Renewal of a Subscription Period

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

BRAZIL

6.1 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

6.1 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 6.1 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

6.1 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 6.1 Automatic Renewal of a Subscription Period:

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, 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

6.1 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 6.1 Automatic Renewal of a Subscription Period:

IBM will renew, for an additional payment, the expiring IBM SaaS Subscription Period for a one year term at the same price and billing frequency, 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

IBM Emptoris Sourcing on Cloud is a system where customers can manage sourcing events including: Request for Information (RFI), Request for Quotes (RFQ), Request for proposals (RFP), buyer Surveys, Reverse English Auctions, and Forward Auctions. The system allows customers to create, run, monitor, report (using canned reports), and award bids and responses submitted from suppliers.

1. IBM Emptoris Sourcing on Cloud

The IBM SaaS offering supports the following features and capabilities:

- The ability to create and run Request for Information (RFI), Request for Quotes (RFQ), Request for proposals (RFP), buyer Surveys, Reverse English Auctions, and Forward Auctions;
- The ability to create templates of the above event types;
- Leverage of the smart data framework and library functions to help create events;
- A set of standard reports that allows Customer to report on data with the events;
- The ability to set up one buying organization,

2. IBM Emptoris Sourcing on Cloud Advanced Add-on

2.1 Sourcing Desktop Intelligence (SDI)

This IBM SaaS feature exports bid data and accesses capabilities in Microsoft Excel to perform a number of analytical tasks.

2.2 Scenario Analysis

This IBM SaaS feature allows the IBM SaaS User to create constraints to meet Customer's unique sourcing requirements and business preferences with pre-built sourcing optimization functionality.

2.3 Optimized Auctions

This IBM SaaS feature enables a buyer to create constraints that will enable a buyer to run optimization throughout the event so cost will not be the only factor for ranking a supplier in an auction.

2.4 Flexible Bidding

This IBM SaaS feature provides the ability to allow bundle bidding, business volume bidding and volume business discounts.

2.5 Supplier Decision Support and Collaboration

This IBM SaaS feature provides feedback to suppliers on their bids, allowing them to offer innovative solutions, emphasize their competitive advantage and optimize their bids.

2.6 One and Two Envelope Bidding

An RFP can be configured as a one envelope or two envelope structure.

2.7 OJEU Notices (sending a tender Notice to the European Union site)

The IBM SaaS offering provides the ability to publish notices to TED (Tenders Electronic Daily) for the following forms in the English language only:

- a. Prior Information Notice Form
- b. Contract Notice Form
- c. Contract Award Notice Form

3. IBM Emptoris Sourcing on Cloud Burst Option for EchOSTM

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

4. IBM Emptoris Sourcing on Cloud Event Monitoring

This IBM SaaS offering is an on-demand service that will coordinate with Customer to run and monitor events as well as train suppliers and support them throughout the lifecycle of the event.