

IBM Sterling Data Synchronization Manager

The terms of this IBM Terms of Use are in addition to those 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 (“Agreement”). Carefully read these IBM SaaS Terms of Use (“Terms of Use” or “ToU”) before using the IBM SaaS and any associated Enabling Software. Customer may use the IBM SaaS and Enabling Software only if Customer first accepts these Terms of Use. By ordering, accessing or using the IBM SaaS or Enabling Software, signing below, or clicking on an “Accept” button, Customer agrees to these Terms of Use. Once these Terms of Use are accepted, unless prohibited by applicable law or specified otherwise, any reproduction of these Terms of Use made by reliable means (for example, photocopy or facsimile) is considered an original.

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

Part 1 – General Terms

1. Purpose

These IBM SaaS Terms of Use (“Terms of Use”) are for the following IBM SaaS:

- IBM Sterling Data Synchronization Manager
- IBM Sterling Data Synchronization Manager EX

For the purpose of this ToU only, the term “IBM SaaS” refers to the specific IBM SaaS offering set forth in this Section 1.

Customer may use the IBM SaaS only during a valid Subscription Period.

2. Definitions

Capitalized terms not defined in these Terms of Use are defined in the Agreement. For purposes of these ToU, the term “Program” includes the term “program” each as may be used in the applicable Agreement, and the term “Transaction Document” includes the term “IBM SaaS Quotation.”

Enabling Software – any Program and associated materials provided to Customer by IBM or a third party as part of the IBM SaaS offering in order to facilitate access to and use of IBM SaaS.

Privacy Practice – the Privacy Practice, located on the Internet at www.ibm.com/privacy, and any subsequent modification.

3. General Charge Terms

3.1 Metrics

The IBM SaaS subscription fee is based on one or more of the following metrics:

SKU is a unit of measure by which the IBM SaaS can be obtained. A SKU (stock keeping unit item) is a unique item in a supplier’s or distributor’s catalog. Sufficient entitlements must be obtained to cover the highest number of SKUs published concurrently by the IBM SaaS during the measurement period specified in the Customer’s Proof of Entitlement (PoE) or Transaction Document.

3.2 Charges & Billing

3.2.1 Billing Options including Metered Billing

The amount payable for IBM SaaS is specified in a Transaction Document as follows:

The subscription fee is billable on an annual, quarterly, or monthly basis for the length of the term as specified in the Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of billing cycles in a year.

3.2.2 Overage Charges

If the Customer's actual metrics during the billing cycle exceed the quantity ordered, then Customer will be invoiced for the overage. Overages will be invoiced in the same billing frequency as the subscription fee.

4. Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM may 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. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

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 on Customer's behalf.

5. Suspension of IBM SaaS and Termination

5.1 Suspension

In the event of a breach of the Terms of Use, Agreement, or Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the offending IBM SaaS User's Content, at any time. IBM will notify Customer of any suspension or revocation action.

5.2 Termination

IBM may terminate Customer's access to IBM SaaS for cause if Customer does not comply with the terms of the Agreement or this ToU and such noncompliance is not remedied within a reasonable time after receiving written notice from IBM. Upon termination, Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within Customer's possession or control.

6. Renewal of a Subscription Period

6.1 Automatic Renewal of a Subscription Period

For IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement customers, the terms of the first two paragraphs of Section 3.5.4 of the Agreement: Annual Renewal of Software Subscription and Support and Selected Support, including any applicable Country-unique terms, apply to this IBM SaaS offering except that for purposes of these Terms of Use:

- a. the words "software subscription and support" or "Selected Support" are replaced by the words "IBM SaaS Subscription Period"; and
- b. to prevent an automatic renewal of the IBM SaaS Subscription Period, Customer must provide IBM with ninety (90) days written notice of cancellation prior to the end of the applicable Subscription Period.

6.2 Customer Renewal Required

For the IBM International Agreement for Selected IBM SaaS Offerings customers, notwithstanding anything to the contrary in that Agreement (including country unique terms), 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 under the terms of the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable.

7. Emergency Maintenance & Scheduled Maintenance

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur.

IBM SaaS will not be available during these times.

8. Updates; Applicable Terms and Authorization for Auto Updates

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates. Customer authorizes IBM to, and agrees that IBM may, in accordance with IBM's standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to IBM SaaS without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

9. Updates to Terms of Use

IBM reserves the right to modify these Terms of Use, only with respect to prospective use of IBM SaaS, at any time, by providing notice of such modified terms to Customer. Customer's continued use of IBM SaaS constitutes Customer's acceptance to be bound by any such modified Terms of Use.

10. Technical Support

Technical support is provided for the IBM SaaS offering and Enabling Software, as applicable, during the Subscription Period as set forth at https://customer.sterlingcommerce.com/group/sterling/support_center or a subsequent URL provided by IBM.

Technical support is included with the IBM SaaS and is not available as a separate offering.

11. Data Privacy and Security

11.1 Customer's Obligations

In relation to all Personal Data provided by or through Customer to IBM, Customer will be responsible as the sole data controller for complying with all applicable data protection or similar laws such as, but not limited to, EU Directive 95/46/EC (and laws implementing that Directive) that regulate the processing of Personal Data including special categories of data, as such terms are defined in that Directive (and laws implementing that Directive).

Customer agrees to obtain all legally required consents, authorizations and approvals and make all necessary disclosures before (i) including any Personal Data in Content and (ii) using the Enabling Software and IBM SaaS.

Customer confirms and acknowledges that it (i) is solely responsible for any Personal Data that may be contained in Content, including any information which any IBM SaaS User shares with third parties on Customer's behalf; and (ii) has determined that IBM's security measures provide an appropriate level of protection for any Personal Data.

Customer is solely responsible for determining the purposes and means of processing any Personal Data by IBM under these Terms of Use, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws.

11.2 IBM's Obligations

IBM will only process Personal Data in a manner that is reasonably necessary to provide IBM SaaS, and only for that purpose.

IBM will only process Personal Data in delivering IBM SaaS as described by IBM, and Customer agrees that the description provided by IBM is consistent with Customer's processing instructions.

IBM will use reasonable endeavors to apply IBM's security measures, and on termination or expiry of either this TOU or the Agreement, IBM will destroy or return to Customer all Personal Data.

If Customer or a Customer data controller is required by applicable data protection laws to provide information about or access to Personal Data to any individual or to a relevant authority, IBM will reasonably cooperate with Customer in providing such information or access.

11.3 International Transfers

Customer agrees that when IBM reasonably determines it to be useful in its provision of IBM SaaS, IBM may transfer Content, including any Personal Data, across a country border to the entities and countries notified to Customer. Such transfer may be made to a country outside the European Economic Area, or to a country that has not been declared by the European Commission to provide an adequate level of data protection. Customer consents to IBM SaaS being provided by such entities in such countries, and is solely responsible for determining that any transfer of any Personal Data across a country border under

the terms of the Terms of Use complies with applicable data protection laws. IBM shall reasonably cooperate with Customer, for Customer's own benefit or for the benefit of a Customer data controller, in its fulfillment of any legal requirement, including obtaining mandatory approvals.

12. Compliance with Applicable Export Law

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Customer acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS. Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws..

13. Indemnity

Customer agrees to indemnify, defend and hold IBM harmless against any third party claim arising out of or relating to: 1) violation of the Acceptable Use policy by Customer or any IBM SaaS User; or 2) Content created within IBM SaaS or provided, uploaded, or transferred to IBM SaaS by Customer or any IBM SaaS User.

14. Copyright Infringement

It is IBM's policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please visit the Digital Millennium Act Notices Page at <http://www.ibm.com/legal/us/en/dmca.html>.

15. Warranty and Exclusions

15.1 Limited Warranty

IBM warrants that IBM SaaS will conform to its specifications, as contained in Appendix A to this Terms of Use. Customer agrees that such specifications may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

If the IBM SaaS does not function as warranted, and IBM is unable to make it do so, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect during the Subscription Period for the IBM SaaS offering.

Items Not Covered by Warranty

IBM does not warrant uninterrupted, secure, or error-free operation of IBM SaaS or that IBM will be able to prevent third party disruptions of IBM SaaS or that IBM will correct all defects.

Customer is responsible for the results obtained from the use of the IBM SaaS.

15.2 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 15.1 will not apply to the extent that there has been misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible.

16. IBM SaaS Offering Unique Terms

Customer must register for 1SYNC and/or ECCnet membership in order for IBM to provide the IBM SaaS. Fees related to membership with ECCnet and/or 1SYNC, including, as applicable, 1SYNC TEST registry fees, or fees with other standards bodies, registries, or exchanges are Customer's responsibility and are not included in the IBM SaaS subscription fees.

- a. Completed 1SYNC membership. Customer must be in possession of IDs and passwords for the production environment. Customer must possess a valid Global Location Number. Customer will use IBM's TPSA code for registration.
- b. Completed ECCnet membership. Customer must be in possession of IDs and passwords for the ECCnet environment and make those IDs and passwords available to IBM. Customer must possess a copy of the ECCnet excel worksheet.

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, 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 will have no liability for such third party sites or services.

As reasonably required by IBM to fulfill its obligations for Set Up Services (if applicable), Customer agrees to provide sufficient access to Customer's systems, information, personnel and resources and perform Customer's other responsibilities in furtherance of the Set Up Services, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform Set Up Services caused by Customer's delay in providing such access or performing Customer's other responsibilities related to the Set Up Services.

17. General

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.

18. Entire Agreement

The complete agreement between the parties, replacing any prior oral or written communications between Customer and IBM, consists of these Terms of Use and the Agreement. If there is a conflict among the terms of these Terms of Use and the Agreement, then these Terms of Use prevail over the Agreement.

Additional or different terms in any written communication from Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as set forth herein.



IBM SaaS Terms of Use – IBM Sterling Data Synchronization Manager

Appendix A SaaS Description

Features and Components

IBM Data Synchronization Manager is a data synchronization solution that manages the process of data collection, cleansing, registration, validation, and publication to a Global Data Synchronization Network (GDSN) compliant data pool. Customer's item master file is collected by IBM Data Synchronization Manager (automated or manual data collection mechanisms are available), then validated for compliance with the GDSN Standard. Customer then interfaces with the IBM SaaS to register and publish Customer's item data to the data pool for consumption by its partners. IBM SaaS provides visibility to Customer Content and partner messaging.

IBM SaaS includes:

Execution - Provides mechanism to collect item data, a data compliance engine to validate item data against the GDSN Standard, and an interactive hosted application that provides visibility into Content and events, and the ability to invoke file registration and publication.