

## IBM Sterling eInvoicing

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 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 are for the following IBM SaaS:

- IBM Sterling eInvoicing

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. A subscription to IBM Sterling B2B Services is required in order to use this IBM SaaS. The IBM Sterling B2B Services are subject to separate Terms of Use and additional fees set forth in a Transaction Document. If Customer has not subscribed to the IBM Sterling B2B Services, then this ToU (and any subscription to IBM SaaS) is null and void.

#### 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.

**Guest User** – an IBM SaaS User that is authorized by Customer to access IBM SaaS to exchange data with Customer or to use IBM SaaS on behalf of Customer.

**Partner** – An organizational entity with which the Customer has a business relationship.

**Privacy Practice** – the Privacy Practice, located on the Internet at [www.ibm.com/privacy](http://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:

**Document** – Document is a unit of measure by which the IBM SaaS can be obtained. A Document is defined as a finite volume of data that is enveloped within a document header and trailer record that marks its beginning and end. Sufficient entitlements must be obtained to cover the total number of Documents processed by the IBM SaaS during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

## **3.2 Charges & Billing**

### **3.2.1 Set-Up**

Set-up charges will be either (a) a specified part number contained in the Transaction Document, or (b) a fee contained in a customized statement of work that will be governed by a separate professional services agreement between IBM and Customer. Set-Up Services will only be provided to a Customer owned or controlled location or an IBM location, as applicable.

### **3.2.2 Subscription Billing**

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

The subscription fee is billable on a monthly or annual basis for the length of the term as specified in the Transaction Document. The amount payable per billing cycle will be based on the subscription fee plus any overage charges.

### **3.2.3 Overage Charges**

If the Customer's actual metrics during the billing cycle exceed the quantity ordered, then Customer will be invoiced monthly for the overage. Overages will be invoiced as set forth in the Transaction Document.

### **3.2.4 On Demand**

On-Demand options will be invoiced in the month the on-demand option is employed by 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 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. Trade-Ups**

Certain IBM SaaS offerings may be acquired for a reduced charge to replace qualifying IBM SaaS offerings. Customer agrees that IBM will terminate Customer's use of the replaced IBM SaaS offering when Customer is provided access to the replacement IBM SaaS offering.

## **6. On Demand Services**

On-Demand Options will be ordered under the terms of the Agreement and the Transaction Document.

## **7. Suspension of IBM SaaS and Termination**

### **7.1 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.

### **7.2 Termination**

If Customer's subscription to the IBM Sterling B2B Services terminates, then Customer's subscription to the IBM SaaS automatically terminates. 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. IBM may terminate Customer's access to IBM SaaS at the end of the current Subscription Period or renewal provided IBM gives Customer written notice of cancellation no less than 90 days prior to the end of the then-current Subscription Period. Upon termination, Customer is responsible for all outstanding charges and 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 your possession or control.

## **8. Renewal of a Subscription Period**

### **8.1 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 (a) for purposes of these Terms of Use 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 written notice of cancellation 90 days prior to the end of the then-current Subscription Period.

### **8.2 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.

## **9. 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. Regular application and system upgrades will be performed as set forth at [https://customer.sterlingcommerce.com/group/sterling/support\\_center](https://customer.sterlingcommerce.com/group/sterling/support_center) or a subsequent URL provided by IBM.

IBM SaaS will not be available during these times.

## **10. 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.

## **11. 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.

## **12. Technical Support**

Unless otherwise superseded in Appendix A, 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](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.

## **13. Data Privacy and Data Security**

### **13.1 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 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. 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.

IBM SaaS is not intended for the storage or receipt of any Sensitive Personal Information or Protected Health Information (as defined below), in any form, and Customer will be responsible for reasonable costs and other amounts IBM may incur relating to any such information provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims. "Sensitive Personal Information" is; 1) Personal Data, the loss of which would trigger a data breach notification requirement, and includes, but is not limited to financial information, country identification number (e.g. Social Insurance Number (SIN), Social Security Number (SSN)) or other governmentally issued identification number such as driver's license or passport number, bank account number, credit card or debit card number; and 2) Personal Data relating to racial or ethnic origin, sexual orientation, or political opinions or religious, ideological or philosophical beliefs or activities or trade union membership. "Protected Health Information" is "individually identifiable health information" as defined under the Health Information Portability and Accountability Act of 1996 ("HIPAA"), as amended.

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. 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.

If IBM makes a change to the way it processes or secures Personal Data as part of IBM SaaS and the change causes Customer to be noncompliant with data protection laws applicable to it, Customer may terminate the current Subscription Period for the affected IBM SaaS, by providing written notice to IBM within thirty (30) days of IBM's notification of the change to Customer. Any such termination will not obligate IBM to issue a refund or credit to Customer.

### **13.2 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.

Upon Customer's written request, following termination or expiry of either this TOU or the Agreement, IBM will destroy or return to Customer all Content that Customer identifies as 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.

### **13.3 Security Practices**

IBM maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS, which practices and procedures are designed to reduce the vulnerability of our systems to intrusions or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the IBM SaaS. A description of the practices and procedures applicable to the IBM SaaS, including applicable technical and operational measures, is available to Customer upon request. Customer is responsible for determining whether these practices and procedures are adequate to meet Customer's requirements. By using the IBM SaaS, Customer acknowledges its acceptance of the IBM practices and procedures and their adequacy for Customer's purposes. Except as specifically provided in the Security Practices for the IBM SaaS, IBM makes no representations or warranties regarding any security functions or that the IBM SaaS or Customer's content are secure from any intrusions or wrongful conduct.

## **14. 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.

## **15. 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.

## **16. 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 Copyright Act Notices Page at <http://www.ibm.com/legal/us/en/dmca.html>.

## **17. Warranty and Exclusions**

### **17.1 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.

### **17.2 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 17.1 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.

## **18. IBM SaaS Offering Unique Terms**

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 shall have no liability for such third party sites or services.

If the IBM SaaS contains user exits that allow Customer (or Customer's designated third party) to configure an IBM software application and Customer (or its designated third party) utilizes the user exits, then IBM is not liable for any resulting configurations ("Customer Unique Extensions") and the Customer Unique Extensions are not part of the IBM SaaS.

IBM (a) may compile and analyze anonymous, aggregate, summary data related to Customer's use of IBM SaaS, and (b) may prepare reports, studies, analyses, and other work product resulting from this compilation and analysis (collectively the "Compiled Data"). IBM retains all ownership rights in and to the Compiled Data.

IBM may copy the Customer's data to a non-production server within the IBM SaaS environment for the exclusive purpose of testing and improving the quality of IBM's products.

As reasonably required by IBM to fulfill its obligations for Set Up Services, Customer agrees to provide (1) sufficient access to Customer's systems, information, personnel and resources and perform Customer's other responsibilities in furtherance of the Set Up Services, and (2) a suitable and safe work environment for IBM employees and contractors while those employees and contractors are on Customer's premises, 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.

IBM is not responsible for any matters related to the offer and sale of products or services by and among Customer, Customer's Enterprise, and Customer's Partners ("Business Transactions") regardless of whether these Business Transactions are communicated by or among such entities as a result of the IBM SaaS.

Customer's Guest Users may be required to execute an online agreement provided by IBM in order to access and use the IBM SaaS. Customer is responsible for these Guest Users, 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.

The IBM SaaS may include (1) the sending or receiving of data between Customer and its Partners; (2) transmission of data to and from Customer's Partners either via direct connections with IBM or interconnections through one or more gateways or networks provided by third parties ("Interconnect Services" and each third party an "Interconnect Provider"); or (3) certain translation services or other associated services. IBM may transfer or store the data outside of the country where Customer or its Partners are located solely for the purposes of providing the IBM SaaS or as required by applicable law or legal process. EXCEPT AS SET FORTH IN A SEPARATE AGREEMENT BETWEEN CUSTOMER AND AN INTERCONNECT PROVIDER, IN NO EVENT WILL ANY INTERCONNECT PROVIDER HAVE ANY LIABILITY TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THE IBM SAAS.

Instances of customized scripts that perform custom processing of the data prior to translation (inbound or outbound) are not documented or included as part of the IBM SaaS.

The IBM SaaS does not at any time include any processing of (or facilitation of the processing of) health care claim data or other health information—received from or on behalf of Customer—from nonstandard formats (or nonstandard data content) to standard elements or transactions (or vice versa).

If required, any additional remote services will be invoiced in accordance with the fee contained in a customized statement of work that will be governed by a separate professional services agreement between IBM and Customer.

### **18.1 Customer will (and will, if applicable, require its Partners to):**

- a. Ensure adequate security over Customer's respective applications, hardware (including installing and maintaining appropriate firewalls to prevent unauthorized access, and transmissions and monitor those transmissions;
- b. Notify IBM of any translation errors or failures, processing errors or failures, nonconforming transmissions, or failures to send or receive transmissions;
- c. Inspect data for accuracy and completeness and encrypt the data if Customer is required to make it (or wants to make it) unreadable or indecipherable in the IBM SaaS environment and in transit over IBM and other third party networks, including any Interconnect Services;
- d. Set the applicable data-processing parameters and transmissions parameters;
- e. Ensure that appropriate safeguards are in place to identify data, processing, and transmission errors;
- f. Maintain supporting data, files, and other materials sufficient to enable IBM to recover all data, files, and other materials (such as card files, tape files, disk files, and printer outputs) needed to re-perform any service provided by IBM SaaS;
- g. Maintain business continuity and communicate expectations to the Partner community, as it relates to test periods, migrations, and conversions of and to the IBM SaaS; and
- h. Ensure that Customer's staff is available to provide assistance as IBM reasonably requires.

## 18.2 IBM will not be responsible for:

- a. Customer's or any third party's equipment or software errors or failures;
- b. Any failure by customer or a third party to act on any communication transmitted to (or by) the Customer;
- c. The creditworthiness or performance of any of Customer's Partners;
- d. Data improperly transmitted by Customer or Customer's Partner;
- e. Customer's interconnect Services (or any errors in or failures of the Interconnect Services) to the extent caused by Customer's Interconnect Services provider, Customer, or Customer's Partners, or any force majeure events; or
- f. Providing any reverse migration services if IBM has terminated any portion of the Agreement.

## 18.3 eInvoicing

- a. Customer hereby authorizes IBM, its third party vendor, TrustWeaver AB, or other third party vendors with which IBM may contract to provide all or a portion of the IBM SaaS (collectively "Processors"), to issue invoices "in name and on behalf of" as described in this subsection titled "eInvoicing," (where the laws of Italy govern the IBM SaaS, all references to "in name and on behalf of" shall be read as "on behalf of"). This unilateral authorization is made solely for tax compliance purposes. Processors are not parties to this Agreement. This subsection does not address or affect rights and obligations concerning commercial or liability aspects of the IBM SaaS provided to Customer. This subsection does not create rights or obligations in relation to processes and controls to be performed by Customer under applicable tax laws other than those explicitly mentioned herein. Unless explicitly stated herein, this subsection does not authorize a Processor to act in the name and on behalf of Customer. Specifically Customer hereby authorizes Processors to do the following.
  - (1) Processors will receive Customer's invoice data not yet constituting an original invoice from IBM and subsequently apply an electronic signature to the data to issue electronic invoices "in the name and on behalf of" Customer. Customer explicitly acknowledges and agrees that Processor will apply such electronic signatures with private keys corresponding to certificates issued by third party certification service providers to Processor. Further, Customer agrees that IBM may add language specifying this relationship to Customer's invoices.
  - (2) Processors will validate the electronic signatures on the electronic invoices where Customer technically requests for electronic signature validation. When Customer acts as a supplier of goods or services for tax purposes, the validation process consists of obtaining revocation status information from the issuing certification authority. The revocation status information is sent or otherwise made available to the buyer in the transaction in the agreed format together with the electronic invoice. When Customer acts as a buyer of goods or services for tax purposes, the validation process will in addition include a cryptographic check of the electronic signature.
- b. This subsection titled "eInvoicing" is intended to meet all requirements, under applicable law regulating electronic invoicing, concerning agreements between invoicing parties and third parties not party to the underlying sales transaction, in particular as regards the issue of electronic invoices "in the name and on behalf of" parties legally obligated to issue an invoice. Such requirements include the requirements for a "mandate" (Fr: "mandat") under French law, as well as equivalent concepts in other laws. If necessary to meet the requirements of applicable law, Customer agrees to sign additional documentation, such as an agreement or mandate from a Processor authorizing the Processor to issue electronic invoices "in name and on behalf of" Customer. This subsection also is intended to meet all requirements, under applicable law regulating electronic invoicing, in relation to the outsourced validation of electronic signatures and the outbound issuance of invoices. In this regard, Customer acknowledges and agrees that:
  - (1) Customer remains fully responsible towards competent tax authorities for the invoice and its VAT and other tax implications. Among other things, Customer remains fully responsible for, where relevant, reporting and paying VAT and other applicable taxes as though the invoice were issued or, as appropriate, received directly by Customer.

- (2) Customer agrees to inform IBM of any changes in information pertaining to Customer that might be relevant to the validity of this subsection or to the correct issuance of Customer's e-Invoices by Processors hereunder.
- (3) Customer agrees to take all the necessary measures to ensure that its eInvoicing processes, as well as those of relevant Customer agents and service providers, that are not the subject of this subsection, fulfill all applicable legal requirements. In particular, Customer agrees to ensure, prior to the use of IBM SaaS, to have in place enforceable agreements with relevant Partners where agreements are required under applicable law. Customer is responsible for ensuring that Partners are valid legal entities who meet all requirements of the taxing authorities in the applicable jurisdiction, and are authorized to do business in the applicable jurisdiction.
- (4) Customer will not submit invoice data to IBM that under applicable law may not be used by a third party for issuing invoices "in the name and on behalf of" suppliers when Customer acts as a supplier in the transaction.
- (5) Customer will inform IBM, within 48 hours (unless a lesser period is required by applicable law) of providing invoice data to IBM, if Customer has not yet received its copy of the original signed invoice issued in its name and on its behalf, or has not yet been granted on-line access to the same.
- (6) Customer will inform IBM within 48 hours (unless a lesser period is required by applicable law) of receiving the invoice, issued in its name and on its behalf by Processor, of apparent errors in the e-Invoice. If Customer has not within the time limit identified an error in the invoice, the invoice will be deemed to have been validly issued. Where possible under applicable law, Customer agrees not to challenge the valid issuance of an invoice if it is deemed to be correct in accordance with the foregoing.

In the event that Customer or tax authorities qualify an invoice issued under this subsection as "self-billing", Customer acknowledges and agrees that all the stipulations under this paragraph b of this subsection apply equally to the self-billing relationship. Further, the Customer as the supplier in the applicable transaction will conform to any other specific applicable legal requirements for self-billing under the applicable law.

## **19. 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.

## **20. 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.



## 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:

- Asia Pacific country amendments; and
- Europe, Middle East, and Africa country amendments.

### ASIA PACIFIC COUNTRY AMENDMENTS

#### AUSTRALIA:

##### 17. Warranty and Exclusions

*The following is added to the end of Section 17:*

The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### JAPAN

##### 17. Warranty and Exclusions

*The following is deleted from the first paragraph of Section 17:*

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.

#### NEW ZEALAND

##### 17. Warranty and Exclusions

*The following is added to this Section:*

The warranties specified in this Section are in addition to any rights Customer may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Customer requires the goods for the purposes of a business as defined in that Act.

### EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

#### EUROPEAN UNION MEMBER STATES

*The following is added to Section 17: Warranty and Exclusions*

In the European Union (“EU”), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 17: Warranty and Exclusions.

## **AUSTRIA**

### **17. Warranty and Exclusions**

*If you paid a charge for the IBM SaaS then the Section 17 Warranty and Exclusions is replaced in its entirety by the following:*

### **17. Warranties and Exclusions**

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS Appendix A of this Terms of Use and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("Ausschluß der Gewährleistung"). Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

## **GERMANY**

### **17. Warranty and Exclusions**

*If you paid a charge for the IBM SaaS then the Section 17 Warranty and Exclusions is replaced in its entirety by the following:*

### **18. Warranties and Exclusions**

IBM provides the IBM SaaS in conformity with its descriptions as contained in the IBM SaaS Appendix A of this Terms of Use and maintains it in this condition for the term of the IBM SaaS. IBM, its Affiliates and suppliers disclaim all further warranties ("Ausschluß der Gewährleistung"). Warranties, if any, for Enabling Software supplied as part of this IBM SaaS may be found in their license agreements.

## **IRELAND**

### **17. Warranty and Exclusions**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

## **IRELAND AND UNITED KINGDOM**

### **20. Entire Agreement**

*The following sentence is added at the beginning of this Section 20:*

Nothing in the following paragraphs shall have the effect of excluding or limiting liability for fraud.

## Appendix A SaaS Description

### Features and Components

IBM SaaS, IBM Sterling eInvoicing, is a cloud-based solution that enables suppliers to send invoices to buyers electronically, using e-signatures, third party signature verification, and archiving, using global integration standards to support buyer and supplier compliance in a single solution, while also maintaining conformity with tax regulations for multiple countries. Specific instructions for the use of the IBM SaaS components listed below may be found in the current applicable IBM provided user documentation that IBM may revise from time to time (the “User Guide”).

The following is a list of all available IBM SaaS components. Customer is entitled to receive only the IBM SaaS components to which they have subscribed under a Transaction Document, a separate statement of work (as described in this ToU), or as On-demand or remote services (also as described in this ToU).

Base IBM SaaS includes:

- a. IBM Sterling eInvoicing Archive Service: consists of archiving data for extended periods of time up to 11 years.
- b. IBM Sterling eInvoicing Signature Services: consists of digitally signing an e-invoice.
- c. IBM Sterling eInvoicing Validation Services: consists of checking the validity of signed invoices against country-specific requirements.