



IBM Terms of Use

IBM Sterling B2B Services - File Transfer Service

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/.

The ToU is in addition to 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. 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 Terms of Use. By ordering, accessing or using the IBM SaaS, Customer agrees to the ToU. By clicking an "Accept" button after being presented with these SaaS Specific Offering Terms, you are also accepting the General Terms.

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

Part 1 – IBM Terms

1. IBM SaaS

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

- IBM Sterling B2B Services – File Transfer Service

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."

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.

Mailbox – A private, secure electronic storage space that is assigned to the Customer and allows the Customer to send, store, and receive electronic data.

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

3. Charge Metrics

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

- Entity ID is a unit of measure by which the IBM SaaS can be obtained. An Entity ID is a unique identifier, which may be referred to in the SaaS environment by different terms that may include but would not be limited to customer ID, partner ID, supplier ID, vendor ID, or EDI ID within the IBM SaaS. Sufficient entitlements must be obtained to cover the total number of Entity IDs contained in the IBM SaaS during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.
For the IBM SaaS offering, an Entity ID is a unique identifier for a trading entity, regardless of that trading entity's organizational structure.
- File is a unit of measure by which the IBM SaaS can be obtained. A File is defined as one or more data, information, or program records bundled together with a specific name. Sufficient entitlements must be obtained to cover the total number of Files processed by the IBM SaaS during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.
- Gigabyte is a unit of measure by which the IBM SaaS can be obtained. A Gigabyte is defined as 2 to the 30th power bytes of data (1,073,741,824 bytes). Sufficient entitlements must be obtained to cover the total number of Gigabytes processed by the IBM SaaS during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

4. Charges and Billing

4.1 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.

4.2 Billing Options

The amount payable for the IBM SaaS is specified in a Transaction Document. The billing options for the IBM SaaS subscription fee 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.

4.3 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 is available.

4.4 Overage Charges

If Customer's actual usage of the IBM SaaS exceeds the entitlement specified in a PoE or Transaction Document, then Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document..

4.5 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.

5. Account Creation and Access

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.

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. Standard technical support is included with the IBM SaaS and is not available as a separate offering. Premium support is available by subscription. Technical support information can be found at the following URL: <http://pic.dhe.ibm.com/infocenter/sb2bsvcs/v1r0/index.jsp>

8. IBM SaaS Offering Unique Terms

8.1 Planning, Building, and Implementing IBM SaaS

IBM will provide the solution resources of the base offering described in Appendix A to plan, build, and implement the IBM SaaS. This will include the following phases:

- a. Service Design Phase is the design of the business and technical environment. IBM will provide an assessment of Customer's current environment including review of any previously prepared architecture document along with any additional requirements gathering IBM deems necessary for initial setup of hardware systems, communications, applications interfaces, and Partner requirements.
- b. Service Provisioning Phase is the migration of the Customer's existing trading Partner community (i.e. Entity IDs) to the IBM SaaS. Per the Transaction Document, IBM will:
 - (1) Initiate connectivity between Customer and IBM,
 - (2) Initiate connectivity between Customer's Partners and IBM,
 - (3) Conduct connectivity testing in accordance with IBM test plans, and
 - (4) Work with Customer to manage the implementation of the Customer's Partner community.
- c. Operations Phase is IBM's management of the day-to-day operations of the IBM SaaS. IBM will operate and manage facilities that house hardware and software related to Customer's File transfer infrastructure within the IBM SaaS.

8.2 Links to Third Party Websites or Other 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, 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.

8.3 Customer Unique Extensions

If the IBM SaaS contains user exits that allow Customer (or Customer's designated third party) to configure a 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.

8.4 Compiled Data

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.

8.5 Guest User Access

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.

8.6 Data Exchange

The IBM SaaS may include (1) the sending or receiving of data between Customer and its Partners or (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 "Interconnection Provider"). 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.

8.7 Data Retention

IBM will retain and provide on-line visibility to data which is 0 - 14 days old, via browser-based visibility tools. After 14 days the data is purged. For the following protocols that require data to be picked up, data is available for pick up for 7 days, after which the data is purged. These protocols are FTP, SFTP, FTPS, and OFTP2,

Exclusions

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 is not designed to comply with the U.S. Health Insurance Portability and Accountability Act ("HIPAA") and may not be used for the transmission or storage of any personal or individually identifiable health care claim data or other health information.

The IBM SaaS may involve the transmission of Content including Customer ID and password from, to, or over third-party systems or networks, such as the Internet and other Interconnect Services, over which IBM exercises no control and for which IBM is not responsible or liable. IBM does not represent or warrant that Content coming into the IBM SaaS environment has been treated by the sender of the Content as confidential, or that Content transmitted from the IBM SaaS environment will be treated by the recipient as confidential. Accordingly, Customer should encrypt the Content if Customer wants to make the Content unreadable or indecipherable in the IBM SaaS environment and in transit over IBM and other third party networks, including any Interconnect Services. Customer is responsible for, and assumes any risk for, choosing the protocols and means it uses to transmit Content over IBM and other third party networks.

8.8 Communications Software and Equipment

IBM must approve any communications software used to transmit data to (and receive data from) IBM. If the IBM SaaS requires a connection of Customer's equipment with IBM equipment (using common carrier communication devices or terminal equipment), the devices and equipment that Customer is provided (and uses) must be of a type approved by IBM. IBM has the sole and exclusive right to select its own equipment, software, and communications carriers to provide the IBM SaaS. Unless otherwise specified herein, Customer is responsible for obtaining an appropriate internet service account and connection for accessing the IBM SaaS.

8.9 Customer Responsibilities

- a. Customer will (and will, if applicable, require its Partners to): Customer will be responsible for maintaining business continuity and expectations to the Partner community, as it relates to test periods, migrations, and conversions
- b. Ensure adequate security over Customer's respective applications, hardware (including installing and maintaining appropriate firewalls to prevent unauthorized access), Mailboxes, and transmission and monitor those Mailboxes and transmissions;
- c. Notify IBM of any processing errors or failures, nonconforming transmissions, failures to send or receive transmissions, or inability to access any Mailbox;
- d. Inspect data for accuracy and completeness and encrypt the data (which may include subscribing for encryption components, if available, as part of the IBM SaaS) if Customer is required to make the data (or wants to make the data) unreadable or indecipherable in the IBM SaaS environment;

- e. Set the applicable data-processing parameters and transmissions parameters;
- f. Ensure that appropriate safeguards are in place to identify data, processing, and transmission errors;
- g. 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;
- h. Implement connectivity between Customer and IBM and work with IBM during joint connectivity testing between Customer and IBM;
- i. For any IBM SaaS component where Customer is required to provide a Partner list, provide the following information:
 - (1) Partner Name and Address
 - (2) Contact Name and Phone Number
 - (3) Fax Number (if available)
 - (4) E-mail Address
 - (5) Value Added Service Provider (in applicable)
 - (6) Qualifier and ID (if applicable)
- j. 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;
- k. Provide systems, security and communication architecture diagrams as reasonably requested; and
- l. Ensure that Customer's staff is available to provide assistance as IBM reasonably requires.

8.10 IBM Responsibilities

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; or
- e. Providing any reverse migration services if IBM has terminated any portion of the Agreement.

8.11 Safe Harbor

IBM has self-certified that B2B Services File Transfer Service adheres to the U.S. - EU and U.S. - Swiss Safe Harbor Frameworks.

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 either a one year term or the same duration as the original term, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

ARGENTINA, BRAZIL, CHILE, COLUMBIA, ECUADOR, MEXICO, PERU, URUGUAY, VENEZUELA

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 either a one year term or the same duration as the original term, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

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

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 either a one year term or the same duration as the original term, if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current Subscription Period or (2) Customer's payment within 30 days of Customer's receipt of the IBM SaaS invoice for the next term.

Appendix A

1. IBM SaaS General Description

The IBM Sterling B2B Services- File Transfer Service (the “IBM SaaS”), is a cloud-based, business-to-business (B2B) software-as-a-service solution that provides for machine-to-machine transfers of large files with a select community of Customer’s Partners. 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).

2. IBM SaaS Specifications

2.1 Base IBM SaaS

2.1.1 Transport

- a. IBM Sterling B2B Services - File Transfer Service: provides for machine-to-machine transfers of large Files with a select community of the Customer's Partners.
- b. IBM Sterling B2B Services - File Transfer Service – Processing: consists of reporting the total volume of Gigabytes processed through the IBM SaaS by Customer and its Partners as measured on a monthly basis.

2.1.2 Support Services

- a. IBM Sterling B2B Services - File Transfer Service - Partner Support: consists of providing support for the Partners, which includes responding to their inquiries with respect to the File Transfer Service and determining the extent of any reported failure with the Partner’s use of the base IBM SaaS with the intent to coordinate resolution of such failure with the Customer. IBM will provide support to Partners through e-mail or telephone. This level of support is in addition to the standard support defined in the Technical Support section of these Terms of Use.

2.1.3 Data Retention

- a. IBM Sterling B2B Services – File Transfer Service - Extended Data Retention: consists of storing Gigabytes for a predetermined, extended period of time. The amount of data to be stored (as measured on the last day of each month) and the period of time that the data will be retained are set forth in the Transaction Document.

2.1.4 Other

- a. IBM Sterling B2B Services – File Transfer Service - File Compression: consists of decompressing a File compressed in the .zip format and then transmitting to either the Customer or Partner as applicable; or compressing into the .zip format an uncompressed File and then transmitting to either the Customer or Partner as applicable.
- b. IBM Sterling B2B Services – File Transfer Service - File Encryption: consists of decrypting a File encrypted with PGP for which IBM and Customer have a key, and transmitting to either the Customer or Partner as applicable; or encrypting with PGP an unencrypted File and then transmitting to either the Customer or Partner as applicable.

2.2 Set-Up Services

- a. IBM Sterling B2B Services – File Transfer Service - Partner Set-up: consists of establishing connectivity with Partners through one of IBM’s supported protocols on the IBM SaaS. Customer must provide IBM with a Partner list.

IBM Responsibilities:

- Contacting Customer to obtain a list of Partners with whom they wish to trade using the IBM SaaS;
- Developing a project plan, which will include definition of roles and responsibilities and establishing a deployment schedule to complete the implementation;

- Submitting on behalf of the Customer a questionnaire to Customer's Partners to gather information needed to establish connectivity. Partners with which IBM has been unable to communicate will be referred to the Customer who then will then assume responsibility for contacting the Partner and completing the questionnaire so that the Partner can be set up;
- Conducting two (2) communication efforts to contact each of Customer's Partners via email, fax, or phone communication. For those communication efforts that fail or where Partners have not responded after IBM's two attempts, one (1) follow-up call will be made to gain compliance;
- Testing no more than four (4) times with each Partner and working to resolve general issues related to the IBM SaaS;
- Generating an AS2 certificate on behalf of the Customer if required;
- Generating an AS2 name on behalf of the Customer if required; and
- Allocating an IP address for the Customer-provided domain.