

IBM Sterling B2B Integration Services

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, 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 B2B Integration Services

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.”

Advanced Map – A Map that has one or more of the following characteristics: (a) advanced structures (e.g. single sub-details or sub-line item levels; (b) extended logic (e.g. custom internal logic, lookup/cross-reference, complex calculations, conditional loops); (c) no pre-or post processing, “user exits” or multi-file output; (d) moderate application file structure (e.g. currently less than 40 total fields and 8 record types); and (e) single output files.

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.

Kilo Character – 1000 bytes of data.

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

Mapping Requirements Specification (MRS) – Provides a visual representation for Map development. The MRS is delivered as a spreadsheet that provides the definition of the field-level relationship between the source data and the output data.

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, and any subsequent modification.

Standard Map – A Map that has one or more of the following characteristics: (a) standard structures (e.g. single sub-details with no sub-line item levels); (b) standard logic (e.g. variable assignment, lookup/cross-reference, no calculations or conditional loops); (c) no pre-or post processing, “user exits”, or multi-file output; (d) moderate application file structure (e.g. currently less than 20 total fields and 4 record types); (e) no XML transformation; and (f) single output files.

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.

Entity ID – 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 IBM Sterling Web Forms, IBM Sterling Supplier Portal, IBM Sterling Supply Chain Visibility Vendor Compliance, and IBM Sterling B2B Services, the Entity ID is a unique identifier for a trading entity, regardless of that trading entity's organizational structure.

Gigabyte – 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

Map – Map is a unit of measure by which the IBM SaaS can be obtained. A Map is defined as an electronic correlation that is used during the run-time of a transaction that determines what to do with source data fields to make them understandable by the recipient of the data. Sufficient entitlements must be obtained to cover the total number of Maps provided by the IBM SaaS that transform input data into something that is understood on the output side during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

PIP (Partner Interface Process) – PIP is a unit of measure by which the IBM SaaS can be obtained. A PIP is defined as an orchestration of transactions into a business process. There are 1 way, 2 way, and 3 way PIPs, each of which is considered a single PIP unit. The term "way" designates how many individual transactions it takes to make up the process. Sufficient entitlements must be obtained to cover the total number of PIPs that are processed by the IBM SaaS during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Request – Request is a unit of measure by which the IBM SaaS can be obtained. A Request is defined as the act by the client that authorized IBM to perform the service. Depending upon the service, the Request can be in the form of a written notice or a support request which is made by phone call, email, or online case. Sufficient entitlements must be obtained to cover the total number of Requests submitted to the IBM SaaS during the measurement period specified in a Proof of Entitlement (PoE) or Transaction Document.

Server Call – Server Call is a unit of measure by which the IBM SaaS can be obtained. A Server Call is data passed to and processed by IBM SaaS as a result of a Customer tagged event, initiated by a tracked visitor. Sufficient entitlements must be obtained to cover the number of Server Calls used 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 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 prospectively modify these Terms of Use, to account for any Updates that IBM may provide or make available for the IBM SaaS during the Subscription Period and as otherwise required by applicable law, by providing at least thirty (30) days prior notice of such modified terms to Customer. Subscription renewals will be governed by the Terms of Use in effect at the time of renewal.

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 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 Protection of Content

Notwithstanding anything to the contrary in the Agreement,

- a. IBM will not intentionally disclose or use Customer's Content except to operate and perform the IBM SaaS as contemplated in this Agreement, subject to IBM's compliance with applicable laws.
- b. IBM will only process Customer Content on systems used to host and operate the IBM SaaS, on which IBM has implemented the security practices and procedures referenced below.

13.4 Security Practices

IBM implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS. These practices and procedures are designed to reduce the vulnerability of our systems to accidental loss, unlawful intrusions, unauthorized access, disclosure or alteration, 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 appropriate 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

For the purposes of Document-based IBM SaaS pricing, a Document is considered to be three (3) Kilo Characters or less in size. If the average size of all Documents for the month exceeds three (3) Kilo

Characters, an overage charge, as specified in the Transaction Document, will be assessed based on the number of excess Kilo Characters processed, divided by three (3).

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 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.

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 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).

IBM will retain and provide on-line visibility to data for a period equal to the length of the Subscription Period. For example, Customer agrees to a 36-month Subscription, and all data is retained during the Subscription Period. If the subscription renews for an additional 24-month Subscription Period, data from the past 24 months will be retained on a rolling basis, meaning that 6 months into the new Subscription Period, the data from the first 6 months of the new Subscription Period and the data from the last 18 months of the previous Subscription Period has been retained. The data retention period may be extended per specific offering in Appendix A. Data is purged after the retention period.

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

- a. Notify IBM of any translation errors or failures, processing errors or failures, nonconforming transmissions, failures to send or receive transmissions, or inability to access any Mailbox;
- b. 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;
- c. Set the applicable data-processing parameters and transmissions parameters;
- d. Ensure that appropriate safeguards are in place to identify data, processing, and transmission errors;
- e. 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;
- f. 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;
- g. Ensure that Customer's staff is available to provide assistance as IBM reasonably requires;
- h. For Map set-up, provide any reasonable requested information by IBM, such as but not limited to application file layouts, Partner requirement specifications, test data, existing Map information;
- i. Provide, if reasonably requested by IBM, Customer's business process definition document for all business process affected by project implementation;
- j. Provide information and materials reasonably required to enable IBM to complete the project implementation, if any; and
- k. Require Customer's project manager to be the single interface between IBM and Customer, attend project team meetings, coordinate and help resolve any project issues within Customer's organization and perform any other reasonable project management duties that are standard within the industry.

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 Project Framework

Per the Transaction Document, IBM will provide the solution resources required 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 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 and Maps) to the IBM SaaS. Per the Transaction Document, IBM will:
 - (1) Implement connectivity between Customer and IBM,
 - (2) Implement connectivity between Customer's Partners and IBM,
 - (3) Conduct unit, integration, and connectivity testing in accordance with IBM test plans,
 - (4) Develop the Mapping Requirements Specifications and Maps, and
 - (5) 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 electronic commerce infrastructure, including equipment, communications, and applications in a secure environment.

The IBM SaaS will allow Customer to transmit files to IBM to be translated, using methodologies based on Customer's provided business rules, and, in turn forward to their Partner(s). Files received from Partner(s) are to be translated using methodologies based on the Customer-provided business rules into Customer's required format and transmitted to Customer pursuant to Customer instructions. Customer will be responsible for maintaining business continuity and expectations to the Partner community, as it relates to test periods, migrations, and conversions.

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.

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:

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.

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 B2B Integration Services, provides secure connectivity and collaboration with your customers, suppliers, and business Partners. Sterling B2B Integration Services are built on the cloud-based B2B integration and visibility capabilities of IBM Sterling B2B Collaboration Network and provide comprehensive service offerings for Partner onboarding, B2B process management, and Partner support. 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).

1. Base IBM SaaS

1.1 Transformation

- a. IBM Sterling B2B Services - Collaboration Network - EDI to Fax Transformation: consists of converting the Customer's EDI messages to a readable format and then faxing the resulting Document to Customer's Partner.
- b. IBM Sterling B2B Services - Integration Basic - Map Change: consists of making up to 4 data changes, conducting up to two testing cycles, and updating the MRS as required.
- c. IBM Sterling B2B Services - Integration Basic – PIP Based Routing for RosettaNet, CIDX, or PIDX: consists of exchanging Documents between Customer and Partner using RNIF 2.0.
- d. IBM Sterling B2B Services – Integration Basic – PIP Based Transformation for CIDX: consists of a surcharge on data that is run through a CIDX Map to convert the data from one format to another during the run-time of the transaction.
- e. IBM Sterling B2B Services – Integration Basic – PIP Based Transformation for PIDX: consists of a surcharge on data that is run through a PIDX Map to convert the data from one format to another during the run-time of the transaction.
- f. IBM Sterling B2B Services – Integration Basic – PIP Based Transformation for RosettaNet: consists of a surcharge on data that is run through a RosettaNet Map to convert the data from one format to another during the run-time of the transaction.

1.2 Support Services

- a. IBM Sterling B2B Services – Integration Plus - Client Services Process Support Subscription: consists of providing technical and customer service support to the Customer. The Customer will maintain the first level support for the Partner community and IBM will provide second level support for the Partner community, managing technical issues as escalated by the Customer. This level of support is in addition to the standard support defined in Section 12.
Additionally, IBM will assign a program manager who will work with Customer to develop an Electronic Commerce (EC) Business Plan that identifies EC business strategies and goals. The program manager will provide, as applicable, project oversight, business reviews and recommendations, perform applicable assessments, and be Customer's single point of contact.
- b. IBM Sterling B2B Services – Integration Plus - Client Process Support with Client Customer Support Subscription: consists of providing technical and customer service support to Customer and Customer's Partner community. IBM will manage B2B technical issues and all business concerns will be escalated to Customer for resolution. IBM will provide Customer's Partner community with a phone number to contact IBM for support. This level of support is in addition to the standard support defined in Section 12.

- c. IBM Sterling B2B Services – Integration Plus - Client Process Support with Client Supplier Support Subscription: consists of providing technical and customer service support to Customer and Customer's supplier Partner community. IBM will manage B2B technical issues and all business concerns will be escalated to Customer for resolution. IBM will provide Customer's supplier Partner community with a phone number to contact IBM for support. This level of support is in addition to the standard support as defined in Section 12.

1.3 Data Retention

IBM Sterling B2B Services – Integration Basic - Extended Data Retention: consists of storing Gigabytes for a predetermined, extended period of time. The amount of data is measured on the last day of the month.

1.4 Other

- a. IBM Sterling B2B Services - Integration Basic - Process Enrichment Service: consists of the ability to take a standard B2B Document flow and 'punchout' to a web service to either validate information within the business Document or to gather additional information that will be used to enrich the business Document content.
- b. IBM Sterling B2B Services - Integration Basic - Synchronous B2B Process Service: consists of real-time website inquiry / response processing, as well as the synchronous exchange of supply chain Documents, providing the ability for Customer to synchronously exchange messages with Partners through the IBM B2B Services environment regardless of differing web services interfaces.

2. Set-Up Services

- a. IBM Sterling B2B Services – Collaboration Network - EDI to Fax Transformation Map Set-up: consists of setting up the process and creating the Map to enable the transformation from a Customer's EDI Document to a fax format to be sent to Customer's Partners.

IBM will:

- Deliver a Fax Layout Definition document, which defines the field-level relationship between the source data (EDI) and the Fax output and how the Fax output should be laid out
- Deliver the output Fax form and cover sheet
- Develop Map (no pre- or post-processing) using the file format, implementation guide, and related implementation requirements
- Perform unit and system testing
- Translate test data
- Validate output test data against MRS
- Implement the developed Map and Fax form into the IBM SaaS environment

Customer will provide:

- Input to the Fax Layout Definition document
- Input to the implementation guide (standard, version, segments, elements, characteristics, looping, etc.)
- Detailed documentation for the EDI implementation for the EDI input file
- EDI test data, in electronic format
- Access to a staff resource knowledgeable in Customer applications and data residency.

- b. IBM Sterling B2B Services – Integration Basic - Advanced Map Set-up. IBM will:
 - analyze the technical requirements for Advanced Map development using the file format, implementation guide, and the related business requirements. Each Partner combination may require a separate analysis;
 - develop required MRS and Advanced Maps for Customer's current production Partners; and
 - implement the developed Advanced Maps into the production IBM SaaS environment.
- c. IBM Sterling B2B Services – Integration Basic – Data Extraction Service Set-up: consists of building a table to store information from specific transactions and configuring the communication of the table to the Customer on a scheduled basis.

- d. IBM Sterling B2B Services – Integration Basic - Expectant Event Alerting Set-up:
IBM will:
- Define Customer identified events based on a schedule or time of day
 - Determine the email address(es) to which to send the alerts
 - Determine the intervals at which the alert(s) must be sent
 - Establish the event and its related alert routing/emails
- e. IBM Sterling B2B Services – Integration Basic - Gentran Integration Services - Map Set-up.
IBM will:
- analyze the technical requirements for Standard Map development using the file format, implementation guide, and the related business requirements. Each Partner combination may require a separate analysis;
 - develop required MRS and Standard Maps for Customer's current production Partners;
 - implement the developed Standard Maps into the production SaaS environment.
- f. IBM Sterling B2B Services – Integration Basic – PIP Based Routing Set-up for RosettaNet, CIDX, or PIDX: consists of establishing and testing the connectivity between customer and Partner using RNIF 2.0.
- g. IBM Sterling B2B Services – Integration Basic – PIP Based Transformation Map for RosettaNet, CIDX, or PIDX. IBM will:
- analyze the technical requirements for Standard Map development where either the source or output of the Map is based on the CIDX standard, PIDX standard, or RosettaNet standard (as applicable), using the file format, implementation guide, and the related business requirements. Each Partner combination may require a separate analysis;
 - develop required MRS and Standard Maps for Customer's current production Partners; and
 - implement the developed Standard Maps into the production SaaS environment.
- h. IBM Sterling B2B Services – Integration Basic – Project Implementation: consists of IBM working with the Customer's Project Manager to agree to a project plan for Map development and Partner configuration and then completing the Map development and Partner configuration activities according to the established project plan.
- i. IBM Sterling B2B Services – Integration Basic - Standard Integration Services Map Set-up.
IBM will:
- analyze the technical requirements for Standard Map development using the file format, Implementation guide, and the related business requirements. Each Partner combination may require a separate analysis;
 - develop required MRS and Standard Maps for Customer's current production Partners; and
 - implement the developed Standard Maps into the production SaaS environment.
- j. IBM Sterling B2B Services-Integration Basic - Standard Integration Services Partner Set-up: consists of working with Customer to manage the implementation of the Customer's Partner community. This service could include set up, configuration, and testing of Partner Connections.
- k. IBM Sterling B2B Services – Integration Plus - Project Implementation: consists of working with the Customer to determine activities necessary to configure IBM Sterling B2B Services, which will include design, physical connectivity, production configuration, testing, and operational and support planning. IBM may:
- provide analysis, design, and project planning services to assess the current Customer environment;
 - perform initial setup of hardware systems, communications, and application interfaces on IBM premises;
 - maintain project communications through the Customer's project manager;
 - measure and evaluate progress against the project plan with the Customer's project manager;
 - conduct periodic project status meetings;

- coordinate project changes with the Customer's project manager; and
- coordinate and manage the technical activities of IBM project personnel.

IBM may assist Customer in completing the following tasks:

- prepare Partner/document type information flow diagram;
- prepare a project plan;
- establish a test plan for: (a) networking/communication, (b) report reconciliation, and (c) application integration, and
- configure and test support systems.

3. On-Demand Services

IBM Sterling B2B Services – Integration Basic - Map Change: consists of making up to four (4) data changes, conducting up to two (2) testing cycles, and updating the MRS as required.