

IBM Marketplace Business Provider Agreement

BY ACCESSING, BROWSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE IBM MARKETPLACE, MARKETPLACE BUSINESS PROVIDER AGREES TO THE TERMS OF THIS AGREEMENT INCLUDING APPLICABLE COUNTRY REQUIRED TERMS IN APPENDIX A. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF MARKETPLACE BUSINESS PROVIDER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND MARKETPLACE BUSINESS PROVIDER TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS, BROWSE, OR CLICK ON AN "ACCEPT" BUTTON.

This Marketplace Business Provider Agreement (the "Agreement") sets forth the terms and conditions under which Marketplace Business Provider may offer one or more Products in the IBM Marketplace.

1. Agreement Structure

The complete agreement governing Marketplace Business Provider's Product in the IBM Marketplace consists of this Agreement including applicable country required terms in Appendix A and any applicable attachments or addendum hereto. This Agreement governs all Products offered by Marketplace Business Provider in the IBM Marketplace. This Agreement and applicable attachments supersede any prior discussions or representations regarding Marketplace Business Provider's participation in the IBM Marketplace.

2. Definitions

Affiliate – any entity that Controls, is Controlled by, or is under common Control with, a party to this Agreement. 'Control' and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of at least fifty percent (50%) of the aggregate of all voting equity interests in an entity, (b) the right to direct its affairs, and/or (c) the right to control the composition of its board of directors or equivalent body.

IBM Marketplace – the Internet environment hosted by or on behalf of IBM that includes the catalog of Products from IBM and Marketplace Business Providers that are available to Users to acquire and use, available at <https://www.ibm.com/marketplace/cloud/us/en-us?lnk=mp> or a successor url.

Product – a service, product or other asset, including without limitation, all versions of data, software, and information, hypertext markup language files, scripts, programs, software development kits, recordings, sound, music, graphics, images, applets, or servlets made available by Marketplace Business Provider electronically to Users through the IBM Marketplace Referral Program.

Product Fees -- the fees, if any, defined by the Marketplace Business Provider, associated with the use of a Product by a User.

User – a user of the IBM Marketplace that accesses the Products.

Error – a) any mistake, problem or defect ("bug") that causes a Product to malfunction or fail to meet its specifications; or b) any incorrect or incomplete statement or diagram in the related documentation that causes a Product to be materially inaccurate or inadequate.

IBM Premium Platform – other computing environments that IBM makes available to Users separately from IBM Marketplace. Users can acquire Products that can be used

in conjunction with these IBM Premium Platforms. Marketplace Business Provider Products may be integrated with these IBM Premium Platforms, (for example, IBM Bluemix is an IBM Premium Platform).

Integration APIs – technical programming interfaces documented in the IBM Marketplace, including APIs for billing, user management, provisioning, upgrade, downgrade, import, sync, APIs for integrating with IBM Premium Platforms for each Product.

Marketplace Business Provider – the party to this Agreement who has accepted the terms of this Marketplace Business Provider Agreement and makes its Product available in the IBM Marketplace. A Marketplace Business Provider may also be an IBM Business Partner with separate legal agreements in place for that relationship. For this agreement Marketplace Business Provider is referring to a party without regard to other relationships with IBM.

Marketplace Business Provider Material – Marketplace Business Provider's trademarks, Product information and content, and other promotional material, documentation, and other information related to the Product.

Private Label Marketplace – an instance of the IBM Marketplace offered to IBM enterprise accounts that may be branded by the enterprise or co-branded with IBM.

Referral Program – the IBM Marketplace program, in which Marketplace Business Provider participates, on a Product by Product basis, whereby the Product listing directs the User to Marketplace Business Provider's website for Product and purchase transactions.

Support – software maintenance, updates, upgrades, technical support and service provided by Marketplace Business Provider electronically to a User when a possible Error is identified in Marketplace Business Provider's Product.

3. Marketplace Business Provider Criteria

Provider must meet all of the following criteria in order to participate in the IBM Marketplace:

- (a) is financially solvent and is not included in the Denied Parties List.
- (b) is able to provide Support to its enterprise customers.
- (c) maintains a website and is able to offer digital sales and marketing support for its Product(s).
- (d) has existing commercial products and/or services in production with paying customers.

4. Product and Product Listings

4.1 Product Criteria

Each Product must meet all of the following criteria in order to be published in the IBM Marketplace:

- (a) The Product shall be at all times in compliance with all applicable legal requirements in all countries where your Product is available;
 - (b) Security is a critical element to a Product's reputation and success. Marketplace Business Provider is responsible for the security of the Product, including any User data collected in connection with the Product;
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- (c) The Product listing must not refer to or promote your Product on other cloud environment where it may be usable. You must provide links to the end user terms (for example, terms of service or an end user license agreement) and privacy policy for your Product;
- (d) Your Product API library (if applicable) will be exposed to Users;
- (e) Your Product cannot be dependent upon any other IBM product (such as a SaaS service, a middleware product or pattern) that has been withdrawn from support; and
- (f) As the IBM Marketplace expands to include local geographic communities within the IBM Marketplace, there may be additional requirements and selection criteria that the Product will need to be meet in order to participate in such geographic community. All geographic communities require Products to be sold to Users in local currency and local language.

4.2 Product Listing and Publication

Marketplace Business Provider will work cooperatively with IBM to publish its first Product listing within ninety (90) days of entering into this Agreement. IBM shall be responsible for loading and publishing the Product listing in the IBM Marketplace, however Marketplace Business Provider is responsible for the Marketplace Business Provider Material, which comprises the Product listing. Marketplace Business Provider shall obtain all necessary licenses and consents needed to publish the Product listing in the IBM Marketplace. Your Product listing shall contain a live up-to-date hyperlink at which the User shall be able to trial, receive Product credentials, and/or purchase the Product, or if the foregoing is unavailable as an online transaction, the User shall be directed to an appropriate business contact to assist the User in completing the Product transaction directly from the Marketplace Business Provider.

IBM's review, approval, or publication of a Product listing will not relieve Marketplace Business Provider of responsibility for developing Products that are safe, free of defects in design and operation, comply with applicable laws and regulations, or for any documentation, Support, or warranty of the Product. IBM may require updates or make changes to the Product listing before publishing the Product listing to the IBM Marketplace as necessary to maintain overall IBM Marketplace consistency and integrity. IBM will notify Marketplace Business Provider of any changes made to the Product listing if the Product listing is already published on the IBM Marketplace. If Marketplace Business Provider does not accept the IBM changes to the Product listing, Marketplace Business Provider may choose to withdraw the Product listing from the IBM Marketplace as set forth in Section 10 (Term and Termination).

4.3 Listing Duration

Marketplace Business Provider shall make the Product listings available in the IBM Marketplace for a minimum of one year. Marketplace Business Provider may remove the Product listing from the IBM Marketplace upon the one-year anniversary of its publication.

4.4 Support

Marketplace Business Provider is solely responsible for all Errors or issues associated with its Product and for providing all Support for its Product for as long as the Product listing is offered on the IBM Marketplace. Marketplace Business Provider must provide the following minimum methods for Support documented in the "Support" section of the

Product listing: (i) Frequently Asked Questions (FAQ) or Getting Started information for Users; and (ii) email support (or web form). The following Support methods are recommended and may be required in the future: (i) forum; and (ii) searchable knowledge base. Additional customer support options, such as phone, web ticketing, or chat may be provided at Marketplace Business Provider discretion.

IBM will provide support to Marketplace Business Provider and Users for the IBM Marketplace. IBM will provide contact information for support for the IBM Marketplace.

In the event IBM receives a support inquiry related to Marketplace Business Provider's Product, IBM will either contact the Marketplace Business Provider or will direct the User to contact Marketplace Business Provider directly.

4.5 Terms

Marketplace Business Provider will provide all terms of use or end user license agreements and all use of the Products will be subject to the Marketplace Business Provider's terms of use or end user license agreement. All licenses or terms of use governing Products will be directly between the applicable User and Marketplace Business Provider. IBM is not a party to such license or terms of use; however, IBM reserves the right in its sole discretion to review Marketplace Business Provider's terms of use or end user license agreement and suspend or remove the Product listing if IBM deems such terms of use or end user license agreement to be inadequate. At a minimum, the terms of use or end user license agreements will:

- a) grant Users the right to use Marketplace Business Provider's Product;
- b) set forth the Product Fees and associated terms, if applicable;
- c) set forth Marketplace Business Provider's security and privacy policies;
- d) not impose any requirements or liability upon IBM; and
- e) If the Product is hosted, or includes hosted components, Marketplace Business Provider must disclose the country in which the Product is hosted and where data is stored, so Users can determine how to comply with laws, regulations, or policies governing the use and transfer of data.

5. Responsibilities

5.1 Marketplace Business Provider Responsibilities

Marketplace Business Provider will:

- a) ensure that the Product performs to the level described, and any statements made for references, Support capability, performance, security, service level agreements, or other business or technical capabilities are accurate and supported by Marketplace Business Provider;
 - b) provide timely Support to identify and correct any known or reported Errors in its Product;
 - c) be responsible for development, implementation, full testing, and management of the Product and all costs associated therewith;
 - d) be responsible for creating and maintaining Marketplace Business Provider Material regarding Marketplace Business Provider's Product;
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- e) provide any applicable terms of use or end user license agreements related to the use of its Products, including billing and payment terms, and maintain such terms of use and license agreements and access thereto;
- f) provide a privacy policy(ies) related to its website and the use of its Products by Users;
- g) securely manage; i) any customer information received from Users, ii) passwords for Users and iii) any other access identifications or credentials used for its Product;
- h) comply with the Acceptable Internet Use Policy for IBM Services set forth at <http://www.ibm.com/services/aup.html>. Marketplace Business Provider is responsible for checking the Acceptable Internet Use Policy periodically for changes and Marketplace Business Provider's continued participation in the IBM Marketplace constitutes Marketplace Business Provider's acceptance of and agreement to any such changes;
- i) not include any confidential information in the IBM Marketplace or its Product listing;
- j) not perform any technical security test, penetration test, or vulnerability scan of the IBM Marketplace;
- k) during the term and for two years thereafter, maintain internal and external records, including written contracts with its Users for the Products, and upon IBM's reasonable written request, provide IBM with adequate documentation to confirm Marketplace Business Provider's compliance with this Agreement; and
- l) obtain all necessary permissions to use, provide, store and process content in the IBM Marketplace and grants IBM permission to do the same.

5.2 IBM Responsibilities

IBM will:

- a) provide reasonable technical assistance as required for registering Marketplace Business Provider's Product listing in the IBM Marketplace;
- b) review and publish the Product listing to the IBM Marketplace if approved by IBM, as described in Section 4 above;
- c) provide notice to Marketplace Business Provider if the terms and conditions of this Agreement change;
- d) provide physical access security for the IBM Marketplace; and
- e) provide User access and authorization controls for the IBM Marketplace.

6. License Grants

6.1 License Grant to IBM

Subject to the terms and conditions of this Agreement, Marketplace Business Provider grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license to 1) publish its Product listing, including all Marketplace Business Provider Material in the IBM Marketplace, and 2) use Marketplace Business Provider Material anywhere within the IBM Marketplace.

IBM acknowledges that the Product and Marketplace Business Provider Material is solely the property of Marketplace Business Provider and its licensors, and nothing in

this Agreement confers upon IBM any intellectual property rights in the Marketplace Product or Marketplace Business Provider Material except as explicitly set forth herein.

6.2 License Grant to Marketplace Business Provider

During the term of this Agreement, IBM grants Marketplace Business Provider a world-wide, non-exclusive, paid-up right and license to access and use any Integration APIs and related documentation made available by IBM through the IBM Marketplace for the sole purpose of integrating Marketplace Business Provider's Product listings into the IBM Marketplace or Private Label Marketplace for access by Users.

Except as set forth in this Section, IBM and its licensors retain exclusive right, title and interest in and to (a) the IBM Marketplace, (b) all visual interfaces, text, graphics and other content included on the IBM Marketplace; (c) all underlying technology, software, data, and other materials that implement and/or operate the IBM Marketplace (including the Integration APIs if applicable); (d) any and all modifications and enhancements and derivative works made to (a) through (d); and (e) any and all intellectual property rights in or related to (a) through (d).

7. Fees

Marketplace Business Provider shall be entirely responsible for the charging and collection of any and all Product Fees and shall enter into terms of use, which shall include billing and payment terms, directly with each User.

Currently, Marketplace Business Provider does not owe IBM a percentage of the Product Fees generated through the Referral Program; however, at any time with ninety (90) days' notice to Marketplace Business Provider, IBM may implement a referral fee which shall apply to Referral Program Products. Continued usage of the IBM Marketplace means Marketplace Business Provider accepts the change.

As requested by IBM in writing, Marketplace Business Provider may be required to track and provide IBM with certain Product data, including Product Fees generated from a Referral Program Product.

8. Disputes and Complaints

Marketplace Business Provider will be responsible for receiving, handling, and resolving all User complaints about the Product, including complaints regarding service level agreements, performance, outages, response times, features and function of the Product, and any other User satisfaction issues for the Products.

9. Compliance

9.1 Export Laws

Marketplace Business Provider will 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 prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Marketplace Business Provider represents that the Product will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulations (ITAR) or the defense trade control regime of any other country.

Marketplace Business Provider acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely

support the delivery of the IBM Marketplace. Upon request, Marketplace Business Provider will provide to IBM the classification of the Product under the U.S. Export Administration Regulations and reasonably work with IBM to ensure compliance with applicable export controls based on this classification.

9.2 Compliance With Laws

Each of us will comply with all applicable laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act and the applicable anti-bribery laws and laws governing transactions with government and public entities, antitrust and competition laws, applicable insider trading, securities, and financial reporting laws, laws governing consumer transactions, and laws regarding data privacy.

9.3 Prohibition on Gifts

Marketplace Business Provider agrees that it will not offer or make payments or gifts (monetary or otherwise such as travel, entertainment, meals, and other items of value) to anyone for the purpose of wrongfully influencing decisions in favor of IBM, directly or indirectly. IBM may terminate this Agreement immediately in case of 1) a breach of this clause or 2) when IBM reasonably believes such a breach has occurred or is likely to occur.

10. Term and Termination

10.1 Term

This Agreement is effective upon acceptance by the Marketplace Business Provider, and will remain in effect as long as Marketplace Business Provider offers one or more Products on the IBM Marketplace, unless terminated earlier as described below.

10.2 Termination

- a) IBM may terminate this Agreement for any reason or no reason with ninety (90) days written notice to Marketplace Business Provider.
- b) Either party may terminate this Agreement for the other party's breach of this agreement upon thirty (30) days written notice to the breaching party, provided the breaching party is unable to cure such breach within thirty (30) days.
- c) Marketplace Business Provider may terminate this Agreement for any reason or no reason on ninety (90) days written notice to IBM after offering the Product listing in the IBM Marketplace for twelve (12) months as set forth in Section 4.3.
- d) Notwithstanding the terms of Section 4.3, Marketplace Business Provider may terminate this Agreement and remove the Product listing from the IBM Marketplace if Marketplace Business Provider provides IBM with ninety (90) days written notice and:
 - i. Marketplace Business Provider withdraws the Product from any and all public offerings, or
 - ii. IBM materially changes the terms of the Marketplace Business Provider Agreement and Marketplace Business Provider does not agree to such changes.

11. Suspension and Removal

- a) IBM may suspend a Product listing from the IBM Marketplace at any time due to Marketplace Business Provider's breach of this Agreement, misappropriation of IBM or third party intellectual property or violation of applicable law or regulation, or for
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any other reason in IBM's sole discretion. Once suspended, Marketplace Business Provider shall be provided with thirty (30) days notice to resolve or cure any such breach, misappropriation, or violation. At the end of such thirty (30) day period, IBM shall either (i) restore the Product listing if such breach, misappropriation or violation is resolved to IBM's satisfaction; or (ii) remove the Product listing from the IBM Marketplace, provided that if such Product listing is removed by IBM, IBM shall provide Marketplace Business Provider with written notice and explanation of its removal.

b) Marketplace Business Provider may suspend or remove Marketplace Business Provider's Product listing from the IBM Marketplace upon ninety (90) days prior written notice to IBM after offering the Product on the IBM Marketplace as set forth in Section 4.3.

12. Confidentiality

Unless the parties mutually agree to exchange confidential information under a separate confidentiality agreement, all information they exchange is non-confidential. Neither party shall disclose the terms of this Agreement to any third party without the other party's prior written consent, except to the extent necessary to establish each party's rights hereunder, or, as required by applicable law or regulations.

13. Representations and Warranties

Marketplace Business Provider represents and warrants that:

- a) Marketplace Business Provider has the necessary rights in and to the Product (including associated marks and names) to grant IBM the rights specified in this Agreement, and to grant Users the rights specified in the Marketplace Business Provider's terms of use or end user license agreement, as applicable;
- b) the Product conforms to its specifications;
- c) any written representations made or information provided by Marketplace Business Provider to IBM or Users is true and accurate;
- d) neither the Product nor the Marketplace Business Provider Material infringes any patent, copyright, trademark or trade secret or any other intellectual property rights of any third party;
- e) Marketplace Business Provider shall take all commercially reasonable steps to safeguard and prevent its Product from containing any virus, mal-ware, or other harmful code; and
- f) Marketplace Business Provider has complied with any and all third party requirements relating to any and all third party and open source software included in the Product.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, NOR THEIR RESPECTIVE SUPPLIERS, MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER IBM NOR ITS SUPPLIERS MAKE ANY WARRANTIES THAT ANY PARTICULAR RESULTS WILL BE DERIVED FROM THE USE OF THE IBM MARKETPLACE OR ANY DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

14. Indemnification

Marketplace Business Provider will defend, indemnify and hold IBM and its Affiliates harmless with respect to any third party claims related to its Product(s), provided IBM promptly (i) notifies Marketplace Business Provider in writing of the claim, (ii) supplies information reasonably requested by Marketplace Business Provider, and (iii) allows Marketplace Business Provider to control and reasonably cooperates in the defense and settlement, including mitigation efforts at Marketplace Business Provider's expense; however, IBM may participate in the proceedings at its option and expense.

15. Limitation of Liability

15.1 Limitation of Liability

Except as expressly set forth in Section 15.2 (Damages Excluded from Limitation of Liability), each party's entire liability for all claims in the aggregate arising from or in connection to the IBM Marketplace, a Product listing, or this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to \$10,000.00, regardless of the basis of the claim. This limit applies collectively to each party and each party's Affiliates and contractors. Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill, anticipated savings; loss of, or damage to, data (including personal data); or network failure or interruption.

MARKETPLACE BUSINESS PROVIDER UNDERSTANDS AND AGREES IBM HAS NO LIABILITY TO MARKETPLACE BUSINESS PROVIDER FOR MISUSE BY USERS OF PRODUCTS THAT ARE MADE AVAILABLE AS PART OF THE IBM MARKETPLACE.

15.2 Damages Excluded from Limitation of Liability

The foregoing limitations and disclaimers of liability shall not apply to (1) the liability of either party for damages associated with its infringement or violation of the intellectual property rights of the other party or its licensors (2) claims arising under Section 14 (Indemnification).

16. Business Contact Information

Marketplace Business Provider agrees that IBM and its subcontractors may process the business contact information of Marketplace Business Provider as a legal entity, and Marketplace Business Provider's employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. Marketplace Business Provider has obtained consent of employees and contractors for the above purposes and IBM will comply with requests to access, update, correct or delete such contact information.

17. Marketing Rights

Subject to the terms and conditions of this Agreement, Marketplace Business Provider grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license to use Marketplace Business Provider's name and logo in the parties' web sites, external presentations, advertising, and marketing materials for the IBM Marketplace. IBM will not display Marketplace Business Provider's name and logo in an inaccurate, derogatory, confusing or misleading manner, and Marketplace Business Provider may require IBM to correct or remove inappropriate uses of their

name and logo. Except as expressly provided herein, IBM does not acquire any rights in Marketplace Business Provider's name or logo.

For so long as this Agreement remains in effect, Marketplace Business Provider may reference the fact that Marketplace Business Provider is a Marketplace Business Provider in press releases and promotional materials in support of the Product, and for general promotion purposes.

Marketplace Business Provider will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. Marketplace Business Provider may not use IBM trademarks without the express written consent of IBM.

Neither party shall make any statements in connection with the use of either party's name and/or logo to suggest, state or imply that either party warrants the other's products or is the source of, uses, or services the other's products.

18. General

- a) Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
 - b) In the event that IBM receives a notice of copyright infringement concerning the Products, where the notice conforms to the then current requirements of the Digital Millennium Copyright Act (DMCA), IBM will immediately suspend the Products listing in the IBM Marketplace. In the event IBM takes such action, Marketplace Business Provider may provide a counter notice to IBM which conforms to the then current requirements of the DMCA and IBM will, in its sole discretion, restore the Products to the IBM Marketplace. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Marketplace Business Provider for action. IBM's current policy regarding the DMCA and its requirements can be found at <http://www.ibm.com/legal/us/en/dmca.html>. In the event the DMCA is amended, IBM will modify the referenced url to reflect such changes. In the event of a discrepancy between the IBM website and the DMCA, the DMCA will prevail. IBM disclaims all responsibility for lost profit and/or revenue during the period in which the Products are removed or suspended.
 - c) The laws of the State of New York govern the rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to its conflict of law principles.
 - d) Any notice required or permitted under this Agreement will be sent to the focal point representatives set forth by both parties. IBM contact information will be listed in the IBM Marketplace. Marketplace Business Provider contact information will be included in the Product listing.
 - e) If any term of this Agreement is found to be unenforceable in any respect, the validity of the remainder of the Agreement will be unaffected.
 - f) A waiver of any right under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's non-compliance with any obligation under this Agreement will not be deemed a waiver of subsequent instances.
 - g) Marketplace Business Provider may not assign this Agreement, in whole or in part, without IBM's prior written consent, which shall not be unreasonably withheld. IBM may assign its rights or delegate or subcontract its duties under this Agreement
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to third parties or an IBM Affiliate without the prior written consent of Marketplace Business Provider. Any unauthorized assignment of this Agreement is void.

h) Any terms of this Agreement, which by their nature extend beyond the date this Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees.

i) Neither party will bring a legal action against the other more than two years after the cause of action arose.

j) This Agreement is nonexclusive. Neither party is a legal representative nor legal agent of the other. Neither party is legally a Provider of the other, and neither party is an employee or franchisee of the other, nor does the Agreement create a joint venture between the parties.

k) Either party may independently develop, acquire, and market materials, products or services that may be competitive with (despite any similarity to) the other party's products or services, subject to the terms and conditions herein. Each party is free to enter into similar agreements with others and may offer to provide any products and/or services to its customers without any obligation to the other party, subject to the terms of this Agreement.

l) Neither party will assume nor create any obligations on behalf of the other or any representations or warranties about the other, other than those authorized. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is either party responsible for any third party claims against the other party except as specifically provided herein.

m) Neither party is responsible for failure to fulfill obligations due to causes beyond its control.



Appendix A: Country Required Terms

For the country of the Marketplace Business Provider's business address, the following terms replace or modify the referenced base terms of the IBM Marketplace Business Provider Agreement. All terms not changed by these amendments remain unchanged and in effect.

AUSTRALIA

9.2 Compliance With Laws

The following is added to the first sentence after the words "all applicable laws and regulations":

"of the State or Territory in which the transaction is performed"

16 Business Contact Information

The following replaces this clause:

Marketplace Business Provider will enable IBM and its subcontractors to lawfully process the business contact information of Marketplace Business Provider as a legal entity, and Marketplace Business Providers' employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. Marketplace Business Provider has made all necessary disclosures and obtained consent of employees and contractors for the above purposes and IBM will comply with requests to access, update, correct or delete such contact information.

18 General

Sub-section (b) is replaced by the following:

In the event that IBM receives a notice of copyright infringement concerning the Products, IBM will immediately suspend the Products listing in the IBM Marketplace. In the event IBM takes such action, Marketplace Business Provider may provide a counter notice to IBM and IBM will, in its sole discretion, restore the Products to the IBM Marketplace. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Marketplace Business Provider for action. IBM disclaims all responsibility for lost profit and/or revenue during the period in which the Products are removed or suspended.

In sub-section (c), "State of New York" is replaced by the following:

"State or Territory in which the transaction is performed"

EUROPE, MIDDLE EAST AND AFRICA

UK - Representations and Warranties

*Replace **MERCHANTABILITY** with **SATISFACTORY QUALITY***

UK – Limitation of Liability

*Replace **business, revenue, goodwill**, with lost business, lost revenue, loss of goodwill,*

UK – Damages Excluded from Limitation of Liability

Add to section

or 3) damages that cannot be limited or excluded according to applicable law,

UK – Business Contact Information

[Add to section](#)

Both parties have the right to use and store contact information about each other's employees such as names, phone numbers and e-mail addresses in any country where that party does business for the purposes of our ongoing relationship or to fulfill its obligations under this Agreement subject to Section 12. Each party is responsible for complying with all applicable laws relating to the use, storage and international transfer of information about its employees.

