

IBM Digital Provider Agreement

BY ACCESSING, BROWSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE IBM DIGITAL COMMERCE PLATFORM, 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 PROVIDER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND PROVIDER TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS, BROWSE, OR CLICK ON AN "ACCEPT" BUTTON.

This Digital Provider Agreement (the “Agreement”) sets forth the terms and conditions under which Provider may offer one or more Products through an IBM digital commerce platform, such as IBM Marketplace or IBM Cloud (each such platform an “IBM Platform”).

1. Agreement Structure

The complete agreement governing Provider’s Product in the IBM Platform consists of this Agreement, including applicable country required terms in Appendix A, and any applicable attachments or addenda. This Agreement governs all Products offered by Provider in an IBM Platform. This Agreement and applicable attachments supersede any prior agreements, discussions or representations regarding Provider’s participation in an IBM Platform.

This Agreement sets forth the terms and conditions for Products in the Referral Program (as defined below). If Provider wishes to sell any Product through an IBM Platform, the parties will enter into a separate agreement to govern such sales, including payment of fees by IBM to Provider.

2. Definitions

Account Data – information that a Provider gives to IBM to enable Provider’s use of the IBM Platform and/or Provider Workbench or information that IBM collects using tracking technologies, such as cookies and web beacons related to the Provider’s use of the IBM Platform and/or Provider Workbench. Account Data does not include Business Contact Information (BCI) or personal data that IBM processes as a processor or sub-processor.

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.

Business Contact Information – information including name, business telephone, address, email and user IDs that a provider obtains or requires in order to enable legitimate business communications with Provider.

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 Brand Approval – approval from IBM that a Product is aligned with an IBM brand’s offering portfolio, obtained as part of the onboarding process through Provider Workbench.

IBM Cloud – the IBM IaaS, PaaS, software, and consulting offerings made available to customers under the IBM Cloud brand through an IBM website and that include a catalog of IBM and non-IBM services available for use or purchase by those customers. IBM Cloud is currently available at <https://cloud.ibm.com>.

IBM Marketplace – the Internet environment hosted by or on behalf of IBM that includes: (i) the catalog of Products from IBM and 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; and (ii) associated tools provided by IBM such as Provider Workbench and Integration APIs.

Integration APIs – documented technical programming interfaces made available through Provider Workbench, including APIs for user management, provisioning, upgrade, downgrade, import and sync, or APIs for integrating with other IBM platforms or systems.

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

Product Fees -- the fees, if any, determined by the Provider in its sole discretion, associated with the use of a Product by a User.

Provider – the non-IBM party to this Agreement who has accepted the terms of this Agreement and makes its Product or Products available in an IBM Platform.

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

Provider Workbench (“PWB”) – the cloud-based tooling and system made available to Providers through a self-service portal which enables Provider to create and manage its Product listings in the applicable IBM Platform.

Referral Program – the IBM Platform program in which Provider may participate on a Product by Product basis. The Referral Program allows Users to access or provision a Product in the following ways: i) a Product listing directs a User to Provider’s website for Product for any purchase; ii) a User may access a no-charge or trial offering of a Product through an IBM Platform; and iii) a User may “bring your own license” purchased from Provider for provisioning on IBM Cloud.

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

User – a user of an IBM Platform that accesses the Products.

3. Product and Product Listings

3.1 Product Criteria

Each Product must meet the following criteria in order to be published in the IBM Platform:

- a) The Product and Product listing shall be at all times in compliance with all applicable legal requirements in all countries where the IBM Platform is available, including without limitation the European General Data Protection Regulation (EU/2016/679) (“GDPR”);
- b) The Product listing made available on the IBM Platform must not refer to or promote the Product on another cloud environment where it may be usable.;
- c) The Product API library (if applicable) is exposed to Users;
- d) The Product cannot be dependent upon any IBM offering that has been withdrawn from support.; and
- e) IBM intends to introduce minimum general availability requirements for Products listed on the IBM Cloud. IBM will notify Provider when such general availability requirements are available. If a Product does not meet the general availability requirements, then Provider may terminate this agreement in accordance with Section 9.2(d)(ii) of this Agreement.

3.2 Product Listing and Publication

Provider will work cooperatively with IBM to publish its Product listing within ninety (90) days of entering into this Agreement using the tools and process provided within Provider Workbench (PWB). Provider is responsible for all content it uploads into PWB, including any Provider Material, which comprises the Product listing. Provider shall obtain all necessary licenses and consents needed to create and publish the Product listing in the IBM Platform. The Product listing shall contain a live up-to-date hyperlink at which the User shall be able to try without charge on a temporary basis, 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 Provider.

Notwithstanding the foregoing, IBM has the right but not the obligation to review and approve the Product, Product listing and integration compliance before such Product or Provider Material is made available to Users. IBM’s review, approval, and/or publication of a Product listing will not relieve Provider of responsibility for: (i) developing Products that are safe, free of defects in design and operation, (ii) compliance with applicable laws and regulations, or (iii) 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 applicable IBM Platform as necessary to maintain overall consistency and integrity of the IBM Platform. IBM will notify Provider of any changes required to the Product listing if the Product listing is already published on an IBM Platform. If Provider does not accept IBM’s proposed changes to the Product listing, Provider may choose to withdraw the Product listing from the IBM Platform as set forth in Section 10 of this Agreement.

If a Product listing is published in one IBM Platform, Provider may have the opportunity to also include that Product listing in other IBM Platform catalogs, upon the parties' mutual agreement.

3.3 Listing Duration for IBM Marketplace

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

3.4 Support

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 Platform. Provider must include information in its Product listing describing the types of Support available for the Product and how Users can access such Support.

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

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

3.5 End User Terms

In each Product listing, Provider will provide all applicable terms of use and/or end user license agreements and all use of the Products will be subject to such terms of use and/or end user license agreement. All licenses or terms of use governing Products will be directly between the applicable User and Provider. IBM is not a party to such license or terms of use; however, IBM reserves the right in its sole discretion to review 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 Provider's Product;
- b) set forth Provider's security and privacy policies;
- c) not impose any requirements or liability upon IBM; and
- d) If the Product is hosted, or includes hosted components, Provider must disclose the country in which the Product is hosted and where data is stored, such that Users can determine how to comply with laws, regulations, or policies governing the use and transfer of data.

3.6 Provider Workbench

PWB is only available to Provider during the Term of this Agreement and only for the limited purpose of creation and publication of Product listings. Provider shall be responsible for its personnel to whom it designates administrative access for each Product listing and Provider shall ensure such personnel comply with the terms of this Agreement. Upon expiration or termination of this Agreement, all content within PWB shall be deleted. Provider is responsible for removing any proprietary content Provider

wishes to retain prior to such expiration or termination. IBM is under no obligation to offer migration capabilities or services.

PWB is not designed to comply with any specific governmental regulation or specific security measures. Provider agrees not to input Provider Material that may result in non-compliance with applicable regulations or required additional security measures. Provider is solely responsible for all necessary third party permissions and consents (including any consents of data subjects for use of personal data required to comply with applicable privacy laws or regulations, including but not limited to the GDPR) to include its Provider Material in PWB and Provider grants IBM permission to use, store and process the Provider Material in the delivery of PWB and the applicable IBM Platform.

Use of PWB in a production environment or for commercial or production purposes, or for performance stress testing, is not permitted. PWB may only provide a limited set of features and functions. **PWB is provided “AS IS” without warranties of any kind. IBM does not warrant uninterrupted or error-free operation of PWB or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.** Subject to any statutory warranties that cannot be excluded, IBM makes no other warranties or conditions, express or implied, regarding PWB or support thereof, if any, including, but not limited to, any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, or non-infringement.

3.7 IBM Brand Approval

This Section 3.7 applies only to Product listings published on the IBM Marketplace. Listings published in the IBM Cloud Catalog or other IBM Platform do not require IBM Brand Approval and are not subject to this Section 3.7.

Provider must obtain IBM Brand Approval to onboard any Product to the IBM Marketplace on or after April 22, 2019. Product listings published on the IBM Marketplace before April 22, 2019, or listings for which the onboarding process commenced before April 22, 2019, are not currently subject to IBM Brand Approval requirements; however, IBM will notify Providers with such listings if this changes.

4. Responsibilities

4.1 Provider Responsibilities

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 Provider;
- b) be responsible for development, implementation, full testing, and management of the Product and all associated costs ;
- c) be responsible for providing Support to its customers as described in Section 3.4 of this Agreement;
- d) be responsible for creating and maintaining Provider Material regarding the Product. Provider will review and update, as necessary, all Product listings at least

- annually. If Provider does not review and update its Product listing(s) annually, IBM may remove or suspend the applicable listing;
- e) maintain a website and offer digital sales and marketing support for such Product(s);
 - f) 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, and ensure that none of the foregoing is provided to IBM;
 - g) maintain physical, technical and administrative security procedures and practices equal to or better than industry standards for ensuring protection of the Product, including content stored in the Product, from unauthorized access, destruction, use, modification or disclosure;
 - h) not use the IBM Platform for unlawful, obscene, offensive or fraudulent purpose or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights;
 - i) not include any confidential information in the IBM Platform or its Product listing;
 - j) not perform any technical security test, penetration test, or vulnerability scan of the IBM Platform;
 - 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 Provider's compliance with this Agreement; and
 - l) obtain all necessary consent to use, provide, store and process Provider Material, including but not limited to consent of data subjects necessary to comply with data privacy laws such as GDPR, if applicable, and will grant IBM permission to do the same.

4.2 IBM Responsibilities

IBM will:

- a) provide reasonable technical assistance as required for creating the Product listing in the IBM Platform and, if applicable, integrating the Product with the Integration APIs;
- b) Review request for IBM Brand Approval within a reasonable time after such request is submitted through PWB;
- c) review and publish the Product listing to the IBM Platform if approved by IBM, as described in Section 3 of the Agreement;
- d) provide notice to Provider if the terms and conditions of this Agreement change;
- e) provide physical access security for the IBM Platform; and
- f) provide User access and authorization controls for the IBM Platform.

5. License Grants

5.1 License Grants to IBM

5.1.1 Right to Publish Product Listing and Use Provider Material

Provider grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license to 1) take all actions necessary to publish its Product listing and all applicable Provider Material in the IBM Platform, including testing to ensure proper integration of the Product listing, 2) use Provider Material anywhere within the IBM Platform, and 3) make non-material changes to the Product listing or Provider Material such as correcting typos, grammatical errors or broken urls.

5.1.2 Intellectual Property Ownership

IBM acknowledges that the Product and Provider Material is solely the property of Provider and its licensors, and nothing in this Agreement confers upon IBM any intellectual property rights in the Product or Provider Material except as explicitly set forth herein.

5.2 License Grant to Provider

During the term of this Agreement, IBM grants Provider a worldwide, non-exclusive, paidup right and license to access and use PWB and any Integration APIs and related documentation made available by IBM through the IBM Platform for the sole purpose of integrating Provider's Product listings into the IBM Platform 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 Platform, (b) all visual interfaces, text, graphics and other content included on the IBM Platform; (c) all underlying technology, software, data, and other materials that implement and/or operate the IBM Platform (including PWB and 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).

6. Fees

Provider shall be solely responsible for the charging and collection of any and all Product Fees and shall enter into terms of use or license agreements, which shall include billing and payment terms, directly with each User. The Provider is further responsible for calculating, collecting, reporting and remitting any and all taxes and duties assessed, incurred or required to be collected or paid for any reason to a tax authority or similar government agency in connection with the sale by the Provider of Referral Program Products to the User. IBM shall have no responsibility for any of the foregoing.

Currently, Provider does not owe IBM a percentage of the Product Fees generated through the Referral Program; however, at any time with ninety (90) days' written notice to Provider, IBM may implement a referral fee which shall apply to Referral Program Products. Upon receiving notice, Provider may remove any Product listing from an IBM Platform, notwithstanding Section 3.3 (Listing Duration), if Provider chooses not to pay the applicable referral fee. Continued usage of the IBM Platform after the 90-day notice period means Provider accepts the change.

After the effective date of this Agreement, if IBM requires a percentage of the Product Fees generated through the Referral Program as described above, or if Provider wishes to sell any Product through an IBM Platform, then the parties agree to enter into supplemental terms needed to support IBM invoicing and collecting payment for Products in each of the in-scope sales countries. Such supplemental terms may include without limitation, adoption of a reseller model between the parties, local contracting between Provider and IBM overseas Affiliates and the execution of tax agency arrangements between Provider and IBM overseas Affiliates. Any supplemental terms will be entered only upon the mutual agreement of the parties.

As requested by IBM in writing, Provider may be required to track and provide IBM with certain Product data, including a report on the total number of leads generated through the Provider's Referral Program Product, as well as the number of leads that resulted in the purchase of a Product licensed or subscription.

7. User Complaints

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. Provider shall respond to all User complaints and other inquiries in a timely manner.

8. Compliance

8.1 Export Laws

Provider will comply with import, export control and economic sanction laws and regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Provider will not export, directly or indirectly, any technology, software or commodities provided by IBM under this Agreement to any prohibited destination or for any prohibited end use. Provider will provide IBM with information about Products necessary for export compliance.

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 Platform. Upon request, 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.

8.2 Compliance with Laws

Provider and IBM will each 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, including GDPR if applicable.

8.3 Ethical Dealings

Provider will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Provider and its Affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of IBM or its Affiliates, offer, promise or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel or other value for a government employee or his/her family members or (c) any payments or gifts (of money or anything of value) to anyone. IBM shall not reimburse Provider for any such political contributions, payments or gifts.

8.4 Data Protection

8.4.1. Business Contact Information

IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process Business Contact Information (BCI) of Provider, its personnel and authorized users for business dealings with them. Where notice to or consent by the individuals is required for such processing, Provider will notify and obtain consent.

8.4.2. Account Data

IBM and its affiliates, and their contractors and sub-processors, may use Account Data for example to enable product features, administer use, personalize experience, and otherwise support or improve use of the IBM Platform. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> provides additional details.

8.4.3. Processing of personal data on Provides behalf

If and to the extent (a) IBM is processing personal data on behalf of Provider and (b) the GDPR applies to such processing of personal data, IBM's Data Processing Addendum (DPA) at www.ibm.com/dpa and the applicable DPA Exhibit at <https://ibm.biz/ProviderDPAExhibit> apply and supplement the Agreement.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the IBM Platform. IBM may transfer Provider's personal data across country borders including outside the European Economic Area (EEA).

9. Term and Termination

9.1 Term

This Agreement is effective upon acceptance by the Provider and will remain in effect as long as Provider offers one or more Products on the IBM Platform, unless terminated earlier as described below. Upon termination, IBM may remove all Provider's listings from the IBM Platform.

9.2 Termination

- a) IBM may terminate this Agreement for any reason or no reason with ninety (90) days written notice to 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) Provider may terminate this Agreement for any reason or no reason with ninety (90) days written notice to IBM after offering the Product listing in the IBM Platform for one (1) year as set forth in Section 3.3.
- d) Notwithstanding the terms of Section 3.3, Provider may terminate this Agreement and remove the Product listing from the IBM Platform if Provider provides IBM with ninety (90) days written notice and:
 - i. Provider withdraws the Product from any and all public offerings, or
 - ii. IBM materially changes the terms of this Agreement and Provider does not agree to such changes.

10. Suspension and Removal

- a) IBM may suspend (i.e. temporarily "hide" the Product listing from public view) or remove a Product listing from the IBM Platform at any time in IBM's sole discretion. If IBM suspends or removes the Product listing pursuant to this paragraph (a), IBM shall provide Provider with written notice and explanation of its suspension or removal.
- b) If IBM suspends the Product listing due to Provider's breach of this Agreement, misappropriation of IBM or third party intellectual property or violation of applicable law or regulation, 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 Platform, provided that if such Product listing is removed by IBM, IBM shall provide Provider with written notice and explanation of its removal.
- c) Provider may suspend or remove Provider's Product listing from the IBM Platform upon ninety (90) days prior written notice to IBM after offering the Product on the IBM Platform for one (1) year as set forth in Section 3.3.

11. Confidentiality

Unless the parties mutually agree to exchange confidential information under a separate confidentiality agreement, all information they exchange is non-confidential, including any content processed by or uploaded to the IBM Platform, including PWB. 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.

12. Representations and Warranties

Provider represents and warrants that:

- a) 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 Provider's terms of use or end user license agreement, as applicable;

- b) the Product conforms to its specifications;
- c) the Product is safe for use with, and will comply with, the warranties and requirements in this Agreement;
- d) any written representations made, or information provided, by Provider to IBM or Users is true and accurate;
- e) neither the Product nor the Provider Material infringes any privacy, intellectual property or other right of a third party;
- f) the Product does not contain harmful code; and
- g) Provider has complied with any and all requirements relating to any and all third party or open source software included in the Product, including all licensing agreements applicable to such third party or open source code.

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 PLATFORM OR ANY DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

13. Indemnification

Provider will defend, hold harmless and indemnify, including legal fees, IBM and its Affiliates against third party claims (including User claims) that arise or are alleged to have arisen, and/or government fines and penalties that are imposed, as a result of: (a) the Product(s) or Product Material infringing or misappropriating any intellectual property right or privacy right of a third party; (b) Vendor's breach of Section 4.1(l) or Section 8.4 of this Agreement; (c) Provider's breach of a representation or warranty; or (d) a dispute between Provider and a User, in each case provided IBM promptly (i) notifies Provider in writing of the claim, (ii) supplies information reasonably requested by Provider, and (iii) allows Provider to control and reasonably cooperates in the defense and settlement, including mitigation efforts at Provider's expense; however, IBM may participate in the proceedings at its option and expense.

14. Limitation of Liability

14.1 Limitation of Liability

Except as expressly set forth in Section 15.2 of this Agreement, each party's entire liability for all claims in the aggregate arising from or in connection to the IBM Platform, 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.

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

14.2 Damages Excluded from Limitation of Liability

The following amounts, if a party is legally liable for them, are not subject to the above limitations or disclaimers: i) amounts arising from third party claims for which IBM is indemnified as provided in Section 13; ii) damages for bodily injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

15. Marketing Rights

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

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

Provider will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. 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.

16. 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 Platform. In the event IBM takes such action, 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 Platform. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the 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 representatives set forth by both parties. IBM contact information will be listed in the IBM Platform. 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 noncompliance with any obligation under this Agreement will not be deemed a waiver of subsequent instances.

g) 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 to third parties or an IBM Affiliate without the prior written consent of 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 partner 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.

n) IBM may modify this Agreement at any time. When you sign into PWB following any changes to the Agreement, you will be promoted to accept the most recent version of the Agreement. However, if you do not sign into PWB and you continue to publish your Product listing on an IBM Platform, you will be deemed to accept the new terms. Therefore, you should review this Agreement from time to time to ensure you continue to agree with the terms. You can locate the most recent version of this Agreement by navigating to the “Settings” tab within PWB. In addition, IBM may notify you of material changes to the Agreement by emailing the address provided when you onboarded your Product. If IBM makes material changes to the Agreement that you do not agree with, then you may terminate the Agreement and remove your Product listing(s) from the IBM Platform in accordance with Section 9.2(d) of this Agreement.

Appendix A: Country Required Terms

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

ASIA

CHINA

Compliance with Laws

The following replaces this clause:

Each party 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, laws regarding data privacy, and Cyber Security Laws.

Business Contact Information

The following replaces clause 8.4.1:

Provider will enable IBM and its subcontractors to lawfully process the business contact information of Provider as a legal entity, and Provider's employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. 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.

General

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

"The laws of the People's Republic Of China 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."

INDIA

General

The sub-section (b) is replaced with 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 Platform. In the event IBM takes such action, Provider may provide a counter notice to IBM and IBM will, in its sole discretion, restore the Products to the IBM Platform. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Provider for action. IBM disclaims all responsibility for lost profit and/or revenue during the period in which the Products are removed or suspended."

The sub-section (c) is replaced with the following:

The laws of India 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. Disputes shall be finally settled in accordance with The Arbitration and Conciliation Act, 1996 then in effect, in English, with seat in Bangalore, India. There shall be one arbitrator if the amount in dispute is less than or equal to Indian Rupee five crores and three arbitrators if the amount is more. When an arbitrator is replaced, proceedings shall continue from the stage they were at when the vacancy occurred.

The sub-section (i) is replaced with the following:

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

KOREA

Termination

The sub-section a) is deleted.

General

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

AUSTRALIA and NEW ZEALAND

AUSTRALIA

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"

Representations and Warranties

The following is added to the end of the paragraph:

"These warranties are in addition to any right under, and only limited to the extent permitted by, the Competition and Consumer Act 2010."

Limitation of Liability

The following is added to the end of the first sentence:

"(for example, whether based in contract, tort, negligence, under statute or otherwise)".

The following is added to the end of the second sentence:

"Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010 (Cth), IBM's liability is limited to (a) for services, the supplying of services again or the payment of the cost of having the services supplied again; and (b) for goods, the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good repaired. Where a guarantee relates to the right to sell, quiet possession,

or clear title of a good under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.”

Business Contact Information

The following replaces clause 8.4.1:

“Provider will enable IBM and its subcontractors to lawfully process the business contact information of Provider as a legal entity, and Providers’ employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. 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.”

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 Platform. In the event IBM takes such action, Provider may provide a counter notice to IBM and IBM will, in its sole discretion, restore the Products to the IBM Platform. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the 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”

NEW ZEALAND

Compliance With Laws

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

“of the country of the Client’s business address to the Agreement”

Representations and Warranties

The following is added to the end of the paragraph:

“These warranties are in addition to any rights under the Consumer Guarantee Act 1993 or other legislation that cannot be limited by law.”

Business Contact Information

The following replaces clause 8.4.1:

“Provider will enable IBM and its subcontractors to lawfully process the business contact information of Provider as a legal entity, and Providers’ employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. 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.”

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 Platform. In the event IBM takes such action, Provider may provide a counter notice to IBM and IBM will, in its sole discretion, restore the Products to the IBM Platform. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the 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:

“country of the Client’s business address to the Agreement”

EUROPE, MIDDLE EAST AND AFRICA

BELGIUM

General

The following is added to the end of sub-section (c):

“provided however that the laws of Belgium will apply to the extent a claim under this Agreement pertains to an employment dispute, a dispute with regard to data privacy or any other mandatory law of Belgium and all such claims will be subject to the exclusive jurisdiction of the courts of Belgium.”

CROATIA

Compliance with Law

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

“of the country in which the transaction is performed.”

General

In sub-section (i) add the following:

“Unless otherwise provided for in by the mandatory provisions of the applicable law,”

CYPRUS

General

In sub-section (c), “State of New York” is replaced by the following: “the laws of Cyprus....”

CZECH REPUBLIC

Representations and Warranties

Add to section:

“Provider enters into this Agreement as the entrepreneur and therefore no consumer rights and protections provided according to the applicable laws of this Agreement and/or laws of the place of business are applicable to the mutual relationship of the parties therein.”

Limitation of Liability

Replace business, revenue, goodwill, with:

“lost business, lost revenue, loss and/or damage to of goodwill,”

Damages Excluded from Limitation of Liability *Add*

to section:

“or 3) damages that cannot be limited or excluded according to applicable laws.”

ESTONIA

Limitation of liability

The phrase “Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill” is replaced with the following:

“Neither party, nor its suppliers, will be liable for indirect damages or damages that are not an immediate, normal and adequate consequence of act or omission; lost profits, business, revenue, lost or damaged goodwill.”

General

In sub-section (i) add the following:

“Unless otherwise provided for in by the mandatory provisions of the applicable law,”

GREECE

General

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

”the laws of Greece....”

HUNGARY

Compliance With Laws

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

“of the country in which the transaction is performed.”

General

A new sub-section (n) is added as follows:

If Hungarian law applies based on Section 9.2, the following terms of the Agreement significantly deviate from the provisions generally applied by Hungarian law: You expressly agree to the effect that certain provisions of the Agreement, – the provision concerning the 3. Product Listing and Publication, 4. Responsibilities, 5. License Grants, 9. Compliance, 10. Terms and Termination, 13. Representations and Warranties and 15. Limitation of Liability – significantly deviate from the provisions generally applied by Hungarian law, particularly by the Civil Code. By signing this Agreement, Provider expressly declares that Provider has been informed and has fully understood all these contractual provisions and Provider accepts the Agreement as binding for itself, including these provisions as well.

IRELAND

Provider Workbench

Delete from the final paragraph:

“title”

Data Protection

The link to the Online Privacy Statement in clause 8.4.2 is replaced with the following:

<https://www.ibm.com/privacy/details/ie/en/>

Representations and Warranties *Delete from the final paragraph:*

“title”

Limitation of Liability

Delete the word “economic”

Replace “business, revenue, goodwill,” with:

“lost business, lost revenue, loss of goodwill,”

Damages Excluded from Limitation of Liability *Add*

to the end of the section:

“or 3) damages that cannot be limited or excluded according to applicable law.”

General

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

“the laws of Ireland”

ISRAEL

General

*In sub-section (c), "State of New York" is replaced by the following:
"State or Territory in which the transaction is performed"*

ITALY

Damages Excluded from Limitation of Liability *Add
to the end of the section:*

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

General

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

The following is added to the end of the section:

"n) Any dispute arising from or related to this Agreement shall be exclusively submitted to the exclusive jurisdiction of the Court of Milan."

LATVIA

Limitation of liability

The phrase "Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill" is replaced with the following:

"Neither party, nor its suppliers, will be liable for indirect damages or damages that are not an immediate, normal and adequate consequence of act or omission; lost profits, business, revenue, lost or damaged goodwill."

General

In sub-section (i) add the following:

"Unless otherwise provided for in by the mandatory provisions of the applicable law,"

LITHUANIA

Limitation of liability

The phrase "Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill" is replaced with the following:

"Neither party, nor its suppliers, will be liable for indirect damages or damages that are not an immediate, normal and adequate consequence of act or omission; lost profits, business, revenue, lost or damaged goodwill."

General

In sub-section (i) add the following:

"Unless otherwise provided for in by the mandatory provisions of the applicable law,"

NETHERLANDS

General

The following is added to the end of sub-section (c):

“provided however that the laws of the Netherlands will apply to the extent a claim under this Agreement pertains to an employment dispute, a dispute with regard to data privacy or any other mandatory law of the Netherlands and all such claims will be subject to the exclusive jurisdiction of the courts of the Netherlands.”

POLAND

Limitation of liability

The phrase “Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill” is replaced with the following:

“Neither party, nor its suppliers, will be liable for indirect damages or damages that are not an immediate, normal and adequate consequence of act or omission; lost profits, business, revenue, lost or damaged goodwill.”

General

In sub-section (i) add the following:

“Unless otherwise provided for in by the mandatory provisions of the applicable law,”

PORTUGAL

Damages Excluded from Limitation of Liability

Add to section:

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

General

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

“the laws of Portugal....”

ROMANIA

Compliance With Laws

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

“of the country in which the transaction is performed.”

RUSSIA

Confidentiality and Data Protection

The following sentence is added to the second paragraph:

"In case such information contains personal data, Provider has obtained consent of respective persons for the above purposes and IBM will comply with requests to access, update, correct or delete such data."

SPAIN

Damages Excluded from Limitation of Liability

Add to section:

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

General

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

"the laws of Spain...."

SWITZERLAND

Business Contact Information

The following replaces clause 8.4.1:

IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process Business Contact Information (BCI) of Provider as a legal entity and Provider's personnel and authorized users for business dealings with them. Where notice to or consent by the individuals is required for such processing, Provider will notify and obtain consent.

UNITED KINGDOM

Compliance with Laws

Add the following paragraph to this section:

"IBM is not responsible for determining the requirements of laws applicable to the Provider's or User's business, including those relating to Products that the Provider offers in the IBM Platform, or that IBM's provision of or the Providers or User's use of the IBM Platform, under this Agreement, meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party."

Prohibition on Gifts

This section is replaced with the following:

"The Provider agrees that it will not (and the Provider will put in place and will maintain throughout the term of this Agreement adequate procedures to ensure that any of its employees or contractors 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 favour of IBM or the Provider, directly or indirectly. This includes any form of facilitation payments (i.e. small bribes paid to facilitate routine government action). 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.”

Data Protection

The link to the Online Privacy Statement in clause 8.4.2 is replaced with the following:
www.ibm.com/privacy/details/uk/en/

Limitation of Liability

Replace "\$10,000" with "£10,000"

Delete "economic"

Damages Excluded from Limitation of Liability

Add to the end of the section:

“or 3) damages that cannot be limited or excluded according to applicable law.”

General

In sub-section (c), “State of New York” is replaced by the following: "The laws of England"

NORTH AMERICA

CANADA

Export Laws

The last sentence of the first paragraph is deleted:

"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."