IBM Digital Platform Reseller Agreement

BY ACCESSING, BROWSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE IBM DIGITAL PLATFORM, VENDOR AGREES TO THE TERMS OF THIS DIGITAL PLATFORM RESELLER AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF VENDOR, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND VENDOR TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK THE "ACCEPT" BUTTON.

This Digital Platform Reseller Agreement (the "Agreement"), between International Business Machines Corporation ("IBM," "we," "us") and the party accepting this Agreement ("Vendor," "you," "your") sets forth the terms and conditions under which IBM is licensed to directly or indirectly resell one or more Products from Vendor to IBM Clients through any of the IBM digital platform sales channels defined below.

1. Agreement Structure

The complete agreement governing IBM's license to resell all your Product(s) that IBM offers in any Digital Platform Sales Channels consists of this Agreement and the applicable attachments. This Agreement, together with applicable attachments, supersedes any prior agreements, discussions or representations in connection with the listing or sale of your Product(s) via a Digital Platform Sales Channel. Singular references to "Digital Platform" mean any Digital Platform Sales Channel on which IBM offers your Product.

As of the date of publication of this Agreement, the Digital Platform governed by this Agreement is the IBM Cloud Catalog. The following attachments include additional terms, including additional terms for specific Digital Platforms:

1. Attachment for IBM Cloud Catalog
2. Standards and Best Practices for EULAs Attachment
3. Privacy and Security Terms Details Attachment

Additional Digital Platforms may become available under this Agreement, and IBM may add attachments to this Agreement as needed.

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 mean: (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.

Anything-as-a-Service (XaaS) – a cloud computing term for the extensive variety of services and applications emerging for users to access on demand over the Internet as opposed to being utilized via on-premises means i.e. Infrastructure-as-a-Service (IaaS), Platform-as-a-Service (PaaS), Business Process-as-a-Service (BPaaS), and Software-as-a-Service(SaaS).

Digital Platform Sales Channel – an Internet environment hosted by or on behalf of IBM that includes: (i) a catalog of Products that are available to IBM Clients to acquire, download, or use from IBM; and (ii) associated tools and

add-on features provided by IBM, such as Integration APIs or tools for onboarding or usage monitoring. Additional terms for each Digital Platform will be included as attachments to this Agreement.

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 Product documentation that causes a Product to be materially inaccurate or inadequate.

IBM Client – an end user with a Digital Platform account that purchases, uses, or otherwise accesses a Product listed on the Digital Platform.

IBM Client Information – any data or information provided to Vendor by IBM, about an IBM Client who has purchased or accessed a Product, including contact information, transaction history or Product usage information. IBM Client Information does not include information received by Vendor directly from an IBM Client or otherwise relating to an IBM Client who has contracted with Vendor directly, outside of a Digital Platform Sales Channel.

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

Net Revenue –the revenue recognized by IBM or an IBM Affiliate calculated using applicable discounts, refunds, returns, offsets, and other adjustments determined in accordance with the then current revenue recognition policies of IBM and its Affiliates and the controlling accounting principles.

Product – an enterprise-ready version of any Vendor software, service, data, media or other asset, including without limitation, all versions of data, data sets, templates, and information, hypertext markup language files, scripts, programs, software development kits, listed or proposed to be listed by IBM on a Digital Platform and has undergone appropriate technical integration based on product type (e.g., using Integration APIs or adding Product binary to asset registry) to enable an IBM Client to access and/or purchase the Product through the Digital Platform. For the avoidance of doubt, only intangible Products may be listed on a Digital Platform.

Product Fee - the fee, if any, determined by IBM in USD, associated with the purchase or use of a Product by an IBM Client which is considered IBM revenue. If Vendor chooses to enable IBM to offer a Product in geographies outside the U.S. when available, IBM will convert the USD Product Fee amount to local currency using an exchange rate established in IBM corporate pricing systems. When a sale occurs, IBM will convert the revenue from such sale from local currency to USD.

Product Listing – the page within a Digital Platform that describes Vendor's Product and related content, including for example, Vendor Material, documentation and license terms, which is created and managed using the Digital Platform's onboarding tools.

Product Trial – the trial, no-charge or community edition of a Product which IBM Clients can access and use for no charge.

Support – Product maintenance, updates, upgrades, technical support and service provided to an IBM Client when a possible Error or other issue is identified in Vendor's Product or on a Digital Platform. Support also includes resolving IBM Client questions regarding Product configuration and capabilities.

Taxes – any and all applicable taxes, charges, fees, levies or other assessments imposed or collected by any governmental entity worldwide or any political subdivision thereof and however designated or levied upon or with respect to the transactions and/or payments to be made under or in connection with this Agreement, including without limitation sales, use, transfer, goods and/or services, value added or consumption tax, digital services tax, withholding tax, financial transaction tax, revenue and/or turnover taxes calculated as a percentage of gross

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revenue, or any other duties or fees, including surcharges on the foregoing taxes; exclusive, however, of any other taxes imposed upon net income or capital.

Vendor – the non-IBM party to this Agreement who has accepted the terms of this Agreement and authorizes IBM to resell its Product(s) on a Digital Platform.

Vendor EULA - the Vendor's terms of use or end user license agreement applicable to use of the Product by IBM Clients. For purposes of this Agreement, the Vendor EULA excludes terms regarding pricing and billing, which will be between IBM and the IBM Client.

Vendor Payment – a percentage, as set forth in the Vendor Payment Details section of the applicable Digital Platform attachment, of the Net Revenue for each Product, payable by IBM to Vendor under this Agreement.

Vendor Material – Vendor's trademarks, including the Vendor Marks as defined in Section 15 of this Agreement, information about the Product, and other promotional material, documentation, and other information related to the Product. Vendor Material does not include the Product itself.

3.   Requirements for Products and Product Listings

3.1   Product and Product Listing Criteria

Each Product must meet the following criteria before the Product Listing is published on any Digital Platform:

a)   The Product Listing must not i) refer to or promote the Product being listed on another cloud marketplace where it may be purchasable or ii) promote any product not offered on the Digital Platform, provided that Vendor may reference other products for compatibility, support or similar purposes.

b)   The Vendor EULA terms must be at least as favorable as the terms used by Vendor for the same offering(s) on other digital platform sales channels, online marketplaces or similar platforms through which Vendor provides standard offers for content substantially similar to the Product.

c)   Additional Product Listing requirements, if any, will be set forth in the relevant Attachment for each Digital Platform.

3.2   Submission and Publication of Product Listing

Vendor will work cooperatively with IBM to publish its initial Product Listing for resale by IBM within thirty (30) days after entering into this Agreement using the Digital Platform's onboarding and certification tools. Vendor is responsible for all content it uploads onto a Digital Platform, including any Vendor Material, which includes the Product Listing. Vendor shall obtain all necessary licenses and consents needed to create and publish the Product Listing on a Digital Platform and with respect to any other Vendor Material provided by Vendor.

Notwithstanding the foregoing, IBM has the right but not the obligation to review and approve the Vendor Material, Product Listing and integration compliance before the Product Listing is published to a Digital Platform. IBM's review, approval, and/or publication of a Product Listing will not relieve Vendor of responsibility for: (i) compliance with applicable laws and regulations or (ii) any documentation, Support, or warranty obligations regarding the Product.

IBM may require updates from Vendor or make nonmaterial changes to the Product Listing before publishing the Product Listing only as necessary to maintain overall consistency and integrity of the Digital Platform. IBM will notify Vendor of any changes required to the Product Listing if the Product Listing is already published. Vendor will review and update, as necessary, all Product Listings at least annually.

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3.3   Vendor EULA Terms and Privacy Policy

As seller of record for Vendor's Product, IBM is responsible for setting the terms and conditions of the sale to IBM Clients. Unless prohibited by local law, IBM will: i) issue the IBM Client invoice in IBM's name; ii) authorize the charge to the IBM Client (i.e. set the payment terms that influence the conditions under which the IBM Client is required to make payment to IBM); iii) set the price charged to the IBM Client; and iv) authorize delivery of the Product to the IBM Client (i.e. influence whether, at what time, or under which preconditions the delivery is made by providing approval to commence the delivery and either i) deliver the service itself or ii) instruct the Vendor to make the delivery).

While IBM will set the contractual terms and conditions of the sale with the IBM Client, each Product Listing will include a copy of or a link to the Vendor EULA, which IBM Client must accept before using or accessing a Product sold by IBM. In addition, IBM will present a copy of or a link to the applicable Vendor EULA on the Product checkout page. The Vendor EULA is directly between the IBM Client and Vendor. Nothing in this Agreement overrides or supersedes the terms of the Vendor EULA between Vendor and IBM Client, including any rights, obligations or limitations in such Vendor EULA.

At a minimum, the Vendor EULA will (a) grant IBM Clients the right to use Vendor's Product; (b) not include any terms that override or attempt to override IBM terms and conditions of sale; (c) if applicable, include any terms necessary to comply with local requirements for any geography in which the IBM Client purchases Vendor Product from IBM; and (d) not impose any requirements or liability upon IBM. In addition, the Vendor EULA will comply with the terms set forth in the "Standards and Best Practices for EULAs" Attachment.

Each Product Listing must also include a link to Vendor's data privacy and security policies. The Vendor EULA or privacy policy (or related documentation) must (i) inform IBM Client about any IBM Client Information that Vendor collects and how such IBM Client Information is used, stored, secured and disclosed, and (ii) describe the controls that IBM Clients have over the use and sharing of their IBM Client Information and how they may access their data and information. If the Product is hosted, or includes hosted components, Vendor must disclose the country in which the Product is hosted and where data is stored, such that IBM Clients can determine how to comply with laws, regulations, or policies governing the use and transfer of data. IBM's privacy policies apply solely to IBM Clients' use of the applicable Digital Platform and IBM products, and will not apply to IBM Clients' use of any of Vendor's Products.
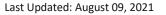
3.4   Product Ratings

IBM may implement mechanisms that allow IBM Clients to rate and provide feedback about a Product (including information about a Product that has been removed from a Digital Platform), Vendor or Vendor's performance in connection with a Product and a Digital Platform. IBM may make these ratings and feedback publicly available. Products or Vendor may be subject to user ratings to which Vendor may not agree. Vendor may contact IBM if Vendor has concerns regarding such ratings.

4.   Vendor Responsibilities and Representations

4.1   Vendor Responsibilities

Vendor will:

a)   As applicable, securely manage i) any IBM Client Information received from IBM Clients, ii) passwords for IBM Clients and iii) any other access identifications or credentials used for its Product, and ensure that none of the foregoing is provided to IBM except as may be required for IBM to fulfill Product orders;

b) 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;

c) if necessary for Product fulfillment, within two (2) days following an IBM Client's purchase of the Product from IBM and receipt of instruction from IBM to commence delivery (i) provision IBM Client's account, and (ii) provide information to IBM Client and IBM to enable IBM Client to access and use the Product, including information regarding service entitlement or access codes or confirmation to IBM of Product entitlement, access requirements or service credentials;

d) if applicable, add Product to an IBM Digital Platform repository to enable IBM to fulfill IBM Client orders of such Product;

e) not use a Digital Platform or a Product Listing 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;

f) not perform any technical security test, penetration test, or vulnerability scan of any Digital Platform; and

g) comply, and ensure that the Product Listing and the Vendor Materials comply, with data privacy laws and regulations such as the European General Data Protection Regulation (EU/2016/679) ("GDPR") if and to the extent applicable. If required under applicable law or regulation, Vendor will obtain consent or otherwise have a legal basis to use, provide, store and process Vendor Material, including but not limited to consent of data subjects necessary to comply with data privacy laws such as GDPR, if applicable, and grant IBM permission to do the same.

4.2   Vendor Representations.

Vendor represents and warrants on an ongoing basis that:

a) information provided by Vendor to IBM or IBM Clients, including Vendor Material, is true, accurate, complete, and not misleading;

b) in performing under this Agreement, Vendor will comply with applicable laws and regulations;

c) to the best of Vendor's knowledge, neither the Product, the Product Listing, nor the Vendor Material infringes any privacy, intellectual property or other right of a third party;

d) the Product does not contain harmful code; and

e) (i) the Product is, and all modifications, new releases, and new versions thereof will be, when listed on a Digital Platform and used by IBM Clients, in compliance in all material respects with all licensing agreements applicable to all third party code, including without limitation open source code and freeware ("Third Party Code") included therein or provided in connection therewith; and (ii) if applicable, Vendor will provide or otherwise make available to IBM Clients any open source software licenses or agreements, including but not limited to licenses which require IBM Client to disclose or distribute any source code based on use, modification, and distribution of Third Party Code, including new releases or new versions thereof.

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5.   License Grants

5.1   License Grants to IBM

5.1.1   License to Product Listing and Vendor Material

Vendor grants IBM and its Affiliates a worldwide, royalty free, non-exclusive right and license during the term of this Agreement and Wind-down Period (if applicable) to 1) take all actions necessary to publish its Product Listing and Vendor Material on a Digital Platform, including testing to ensure proper integration of the Product Listing, 2) display Vendor Material anywhere within the Digital Platform, and 3) make non-material changes to the Product Listing or Vendor Material such as correcting typos, grammatical errors or broken urls.

5.1.2   License to Products

Vendor grants IBM and its Affiliates a worldwide, non-exclusive license to resell, distribute (including through business partners), deploy, reproduce, perform, display, and use the Product during the term of this Agreement and Wind-down Period (if applicable) in connection with: 1) the operating and marketing of the Digital Platform; 2) testing and validating that the Product functions in the Digital Platform environment; and 3) IBM Client Product purchase from IBM. This license grant allows IBM and its Affiliates and their personnel to demonstrate and promote the Product to IBM Clients, allow IBM Clients to evaluate the Product by using the Product Trial edition, and train IBM personnel on the Product, each without payment of Vendor Payments. IBM may not reverse assemble, reverse compile, translate, or reverse engineer the Product. For purpose of clarity, this Section 5.1.2 does not grant IBM the right to use the Product for any internal productive use, whether in connection with, or independent of, the Digital Platform.

5.1.3   Intellectual Property Ownership

IBM acknowledges that the Product and Vendor Material are the sole property of Vendor and its licensors, and nothing in this Agreement confers upon IBM any intellectual property rights in the Product or Vendor Material except the limited licenses explicitly set forth in this Agreement. Except as needed with respect to modifications of the Product Listing or Vendor Material expressly authorized in the licenses granted in Section 5.1.1 and 5.1.2, nothing in this Agreement shall be construed as conferring on IBM any separate right to modify or adapt the Product or Vendor Material, or prepare derivative works based on the Product or Vendor Material. Vendor represents and warrants that it has the necessary rights in and to the Product (including associated marks and names) and Vendor Material to grant IBM the rights specified in this Agreement, and to grant IBM Clients the rights specified in the Vendor EULA.

5.2   License Grant to Vendor

During the term of this Agreement, IBM grants Vendor a worldwide, royalty free, non-exclusive, right and license to access and use the Digital Platform tooling and any Integration APIs and related documentation made available by IBM through such Digital Platform for the sole purpose of integrating Vendor's Product Listing(s) into the Digital Platform for access by IBM Clients.

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

6.   Product Fee and Payments

6.1   Product Fee

IBM will determine the Product Fee excluding applicable Taxes, using the pricing and billing options available in the Digital Platform.

Vendor will provide any usage information for a Product subscription reasonably necessary for IBM or an IBM Affiliate to calculate the Product Fee payable by IBM Clients for their usage of such Product.

6.2   Vendor Payments

Vendor Payments are paid against revenue recognized by IBM in a royalty month. Subject to receipt of a tax compliant invoice from Vendor, IBM payments to Vendor, if any due, will be made the last business day of the second calendar month following a royalty payment month, unless the last day of the month falls on a weekend or holiday, in which case it will then be made by the next business day. A royalty month ends on the last day of the calendar month. All payments will be made in U.S. dollars.

Vendor Payments will be calculated as a percentage of the Net Revenue (as set forth in the Vendor Payment Details section of the applicable Digital Platform attachment) for each Product sold by IBM for a given calendar month, less: ii) any non-refundable and/or non-creditable Taxes applicable to, withheld on or deducted from either the Net Revenue amount due to IBM or payments made by IBM or its Affiliates to the Vendor; and (iii) any non-refundable and/or non-creditable Taxes applicable to, withheld on or deducted from payments between IBM Affiliates in connection with the transfer of payments due to Vendor related to this Agreement.

Vendor Payments will be paid less refunds and credits due to IBM.

6.3   IBM Client Product Refunds and Credits

IBM or an IBM Affiliate will be the contact for refund and credit requests and billing disputes from IBM Clients and IBM or IBM Affiliates will be responsible for setting the terms on which any refund and credit requests and billing disputes are resolved. In accordance with the IBM Client terms governing the Digital Platform, IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

7.   Taxes

Vendor's invoices shall state all applicable Taxes, if any, by tax jurisdiction and with a proper breakdown between taxable and non-taxable services and deliverables. Each party agrees to cooperate to minimize any applicable taxes, including reasonable notice and in connection with any audit. Vendor shall also bear sole responsibility for all taxes, assessments, or other levies on its own income, leased or purchased property, equipment or software. If IBM provides a direct pay certificate, certification of an exemption from Taxes or reduced rate of Taxes imposed by an applicable taxing authority, then Vendor agrees not to invoice or pay any such Taxes unless and until the applicable taxing authority assesses such Taxes, at which time Vendor shall invoice and IBM agrees to pay any such Taxes that are legally owed. IBM shall withhold Taxes as required under applicable law on payments made to Vendor hereunder and shall be required to remit to Vendor only the net proceeds thereof. IBM agrees to remit in a timely manner all Taxes withheld to the appropriate government authority in each respective jurisdiction. Upon Vendor request, IBM will deliver the appropriate documentation as required by the corresponding jurisdictional tax laws, within a reasonable time from such request.

7.1   Tax Responsibilities

Both parties agree to reasonably cooperate with each other in the event of an audit by a tax authority.

Vendor shall deliver Products (including any related documentation) to IBM or IBM Clients in electronic format only. Vendor agrees that it will not deliver tangible goods including but not limited to CDs, DVDs, or tapes to any IBM Client.

8. Compliance

8.1 Export Compliance

Vendor will comply with applicable 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. As part of such compliance, Vendor will provide IBM with the applicable export control classification number (ECCN) for each Product. Vendor will include the ECCN for the Product in the Digital Platform onboarding tooling, and agrees to reasonably cooperate with IBM to ensure compliance with applicable export controls for the delivery of any Product based on the ECCN.

As the seller of record, IBM will comply with applicable 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.

8.2 Ethical Dealings

Each party will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Vendor 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 Vendor for any such political contributions, payments or gifts.

8.3 Data Protection and Privacy

8.3.1 Privacy and Security

The terms of the Privacy and Security Attachment apply to Vendor's participation as a provider of Products to IBM for resale by IBM to IBM Clients that use IBM's Digital Platform.

8.3.2 Use of IBM Client Information

Vendor will use IBM Client Information in accordance with applicable laws and regulations, including any applicable privacy laws and regulations, for the following purposes (i) to communicate with IBM Clients regarding the provision or operation of the Product, including communications about Support, service outages or downtime, feedback requests, changes to a license agreement or terms of use, or training; (ii) for Product activation, configuration or customization of content; or (iii) to respond to an IBM Client inquiry regarding a Product listed on a Digital Platform.

Vendor may not use IBM Client Information to attempt to sell directly to IBM Clients or to influence IBM Clients to make an alternate purchase outside the Digital Platform.

This Section 8.3.2 does not prevent Vendor from using other IBM Client contact information that Vendor acquires independently from the Digital Platform for any lawful purpose, even if that information is identical to IBM Client Information. For example, Vendor may contact IBM Client directly regarding deployments. This Section 8.3.2 does

not prevent Vendor from contacting any IBM Client regarding a Product that is no longer listed on a Digital Platform or after the termination of this Agreement, provided Vendor has the necessary permissions for such contact.

9.   Term and Termination

9.1   Term

This Agreement is effective upon acceptance by the Vendor and will remain in effect until terminated as described below. Upon termination, i) IBM will remove all Listings of Vendor Product from the Digital Platform, and ii) terminate IBM Clients' access to Product updates or remove IBM Clients' entitlement to the Product, as applicable, in each case, subject to any applicable wind-down periods described in Section 9.3 below.

9.2   Termination

a) Vendor or IBM may terminate this Agreement for any reason or no reason with ninety (90) days written notice to the other party.

b) Either party may terminate this Agreement for cause if the other party is in material breach of the Agreement or, to the extent permitted by law, if the other party becomes insolvent or files or has filed against it a petition in bankruptcy, provided the non-breaching party provides written notice (with the termination date) to the breaching party, and the breaching party fails to cure such breach within thirty (30) days of receipt of such written notice.

c) Termination of this Agreement does not affect any payment obligations set forth in Section 6 of this Agreement.

9.3   Withdrawal of Products; Wind-down Period

a) If Vendor announces that it will withdraw a Product from general availability, Vendor will notify IBM at least ninety (90) days before the withdrawal date. IBM will notify IBM Clients that Product will not be available for new orders or renewal orders after the date specified by Vendor.

b) Existing IBM Clients at the time of withdrawal or termination of the Agreement may continue to use the Product, and Vendor will continue to provide Support for the Product, for twelve (12) months after withdrawal or termination, or until expiration of the term of IBM Clients' subscriptions to the Product, whichever is shorter (the "Wind-down Period"). IBM will continue to collect Product Fees during the Wind-down Period.

c) If applicable, IBM will provide a pro rata refund to IBM Clients who have paid Product Fees beyond the Wind-down Period for the cancelled portion of the subscription term following the Wind-down Period. IBM will deduct such amounts from future Vendor Payments, or if Vendor will not be paid future Vendor Payments, then Vendor will reimburse IBM for such amounts.

10.   Suspension

a) IBM may suspend (i.e., temporarily "hide" from public view) a Product Listing from the Digital Platform at any time in IBM's sole discretion. Suspension will result in the Product no longer being visible in the Digital Platform or available to new IBM Clients. However, existing IBM Clients will be able to continue to use the Product, and IBM will continue to collect Product Fees during such suspension. Upon suspension, IBM will provide Vendor with written notice and an explanation, and provide Vendor thirty (30) days to correct the

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issue leading to suspension. At the end of such thirty (30) day period, IBM shall (i) restore the Product Listing if Vendor resolves the issue to IBM's satisfaction, (ii) extend the suspension if the parties are continuing to work toward issue resolution, or (iii) remove the Product Listing from the Digital Platform, provided that if such Product Listing is removed by IBM, IBM shall provide Vendor with written notice and explanation for its removal.

b) Vendor may request that IBM suspend a Product Listing from the Digital Platform at any time upon written notice to IBM. Existing IBM Clients will be able to continue to use the Product, and IBM will continue to collect Product Fees during any such suspension.

11. Confidentiality

Except as set forth in this Section, 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 a Digital Platform and its associated tools. 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.

In connection with this Agreement and as the digital reseller of Vendor's Products, IBM may receive information related to support of Products, nonpublic pricing information for such Products, or nonpublic terms of use or end user license agreements provided by or entered into between Vendor and IBM Clients. IBM will treat such information as confidential by not disclosing such information for a period of two years (unless otherwise agreed to in writing by the parties), except to IBM's or its Affiliates' employees, contractors, and subprocessors who have a need to know. Notwithstanding the above, IBM may use information 1) already in its possession without obligation of confidentiality; 2) developed independently; 3) obtained from a source other than Vendor without obligation of confidentiality; 4) publicly available when received, or subsequently becomes publicly available through no fault of IBM; or 5) disclosed by Vendor to another without obligation of confidentiality.

If the parties have a separate confidentiality agreement that governs disclosures related to the Digital Platform, the terms of such separate agreement will supersede the terms of this Section 11 in the case of any conflict.

12. Indemnity

Vendor will defend, hold harmless and indemnify, including legal fees, IBM and its Affiliates against third party claims (including IBM Client 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 Vendor Material infringing or misappropriating any intellectual property right or privacy right of a third party; (b) Vendor's breach of any of its privacy or security obligations under this Agreement (including the terms of the Privacy and Security Terms Details Attachment); (c) Vendor's breach of a representation or warranty; or (d) a dispute between Vendor and an IBM Client. IBM will give Vendor prompt notice of third-party claims against IBM, and cooperate in the investigation, settlement and defense of such claims.

Vendor will defend, hold harmless and indemnify IBM and its Affiliates against third party claims concerning payment of any Taxes imposed in connection with any transaction, and with respect to any fine imposed by a government authority as a result of Vendor's failure to remit or report any such Taxes, including without limitation claims linked to joint and several liability provisions that result in tax assessments being levied on IBM or its Affiliates as a result of an act or omission by Vendor.

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13.   Limitation of Liability; Disclaimer of Warranty

13.1   General Limitation of Liability

Except as expressly set forth in Section 13.2 and Section 13.3 of this Agreement and except for IBM's obligation to provide Vendor Payments as described in Section 6.2 of this Agreement, to the maximum extent allowed by applicable law, neither party's total liability per incident for any damages under this Agreement will exceed the total Product Fees that IBM billed to IBM Clients for the 12-month period preceding the incident giving rise to the related claim. These limits apply collectively to each party and each party's Affiliates and contractors. Neither party will be liable to the other for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, loss of data, business, value, revenue, goodwill, or anticipated savings.

VENDOR UNDERSTANDS AND AGREES IBM HAS NO LIABILITY TO VENDOR FOR MISUSE BY IBM CLIENTS OF PRODUCTS THAT ARE MADE AVAILABLE ON A DIGITAL PLATFORM.

13.2   Limitation of Liability for Privacy and Security Obligations

Notwithstanding the limitations set forth in Section 13.1 of this Agreement, and subject to Section 13.3 below, Vendor's total liability for any damages arising out of the Privacy and Security Terms Details Attachment is limited to the greater of i) $6 ,000,000 (six million dollars) or ii) three times the total Product fees that IBM billed to IBM Clients (as such terms are defined in the Agreement) for the 12-month period preceding the incident giving rise to the related claim.

13.3   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 Vendor's obligations under Section 12; ii) damages for bodily injury (including death); iii) damages to real property and tangible personal property; iv) costs, expenses, damages and other amounts arising out of Vendor's gross negligence or willful misconduct; and v) damages that cannot be limited under applicable law.

13.4   Disclaimer of Warranty

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, ITS AFFILIATES, 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 A DIGITAL PLATFORM OR ANY DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

14.   Marketing Rights

Subject to the terms and conditions of this Agreement, and to reasonable use requirements and limitations established by Vendor and provided to IBM, Vendor grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license during the term of this Agreement and Wind-down Period (if applicable) to use Vendor's name and logo, and Product name and/or logo (collectively, the "Marks") on IBM's and its Affiliates' web sites, external presentations, advertising, and marketing materials for the applicable Digital Platform and related ecosystem materials. IBM will not display the Marks in an inaccurate, derogatory,

confusing or misleading manner, and Vendor may require IBM to correct or remove inappropriate uses of its Marks. Except as expressly provided herein, IBM does not acquire any rights in Vendor's Marks.

For so long as this Agreement remains in effect, you may reference the fact that you have a resale agreement with IBM in press releases and promotional materials in support of the Product, and for general promotion purposes.

Vendor will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. Vendor may not use IBM trademarks, including the IBM logo, 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.

15. **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 a Product, where the notice conforms to the then-current requirements of the Digital Millennium Copyright Act (DMCA), IBM will immediately suspend the Product Listing in the applicable Digital Platform. In the event IBM takes such action, Vendor 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 Product to the Digital Platform. If IBM receives a notice of copyright infringement concerning the material an IBM Client stores in the Product, IBM will refer the notice to the Vendor 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 Digital Platform onboarding tooling. Vendor 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) Neither party may assign or otherwise transfer this Agreement or any right or obligation under this Agreement without the prior written approval of the other party; provided, however, that either party may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the consent of the other party (i) in connection with a merger, acquisition or sale of all or substantially all of its assets; (ii) to an affiliate as part of a corporate reorganization; or (iii) in connection with any obligations described in paragraph n) below. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. Any other attempt to assign 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 including but not limited to Section 11 and Section 15.a) of this Agreement. 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. The obligations in Section 11 do not preclude a party from assigning its employees in any way it chooses.

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) As necessary to enable IBM or IBM Affiliates to comply with local tax laws or to align with IBM's business model in jurisdictions outside the US, Vendor agrees to execute jurisdiction specific contract terms, including without limitation, local agreements with IBM Affiliates.

o) IBM may modify this Agreement at any time. A notice will be sent by email to Vendor notifying Vendor of the changes and describing any modifications made. Changes will not be retroactive. Except for terms enabling Vendor to sell in non-U.S. geographies, changes will become effective, and will be deemed accepted by Vendor, on the date specified in the notice which will be no shorter than 30 days from the date of the notice, and for as long as any Product Listing remains published on a Digital Platform, Vendor will be deemed to accept the new terms in accordance with the notice provided. Terms related to selling products in non-U.S. geographies become effective when Vendor elects to authorize IBM to resell into the applicable geography. If IBM makes material changes to the Agreement that Vendor does not agree with, Vendor may terminate the Agreement and remove Product Listing(s) from a Digital Platform in accordance with Section 9.2(a) of this Agreement.

IBM

Attachment for IBM Cloud Catalog

A. General Terms

The following terms apply for any Products listed on the IBM Cloud Catalog ("Cloud Catalog"). The Cloud Catalog is a "Digital Platform" as defined in the Agreement.

1. Vendor Support Obligations of Products on the Cloud Catalog:
    a. Vendor is responsible for all Support for its Product, included as part of the Product Fee charged for the Product, for as long as the Product is offered on a Digital Platform and during any applicable Wind-down Periods, as defined in Section 9.3. Vendor is required to provide Support to IBM Clients using Product Trial editions, and all editions of the Product offered on a Digital Platform regardless of the Product Fee for such edition.
    b. Vendor will also provide the following information, either in the Product Listing and directly to IBM, to inform IBM Clients on the level of support expected from the vendor:
        i.   sufficient Product documentation
        ii.   support contact details for a Vendor to address high severity issues;
        iii. expected case management of submitted product cases
2. IBM Support Obligations of Vendor Products on the Cloud Catalog:
    a. IBM will enable IBM Client to ask questions or report problems regarding the IBM Client's installation or provisioning of Vendor's Product.
3. IBM may receive IBM Client complaints about the Product, including complaints regarding service level agreements, performance, outages, response times, features and function of the Product, and any other client satisfaction issues for the Products. If needed, IBM will work with Vendor to respond to all IBM Client issues and inquiries received through a Digital Platform.
4. Vendor Payment Details – IBM Cloud Catalog

    This Paragraph 4, Vendor Payment Details – Cloud Catalog, applies to any Product that IBM is authorized by Vendor to resell Vendor to IBM Clients on the IBM Cloud Catalog ("Cloud Catalog"). The Cloud Catalog is a "Digital Platform" as defined in the Agreement.

    IBM will pay Vendor a Vendor Payment for each sale of a Product as follows:

    Anything-as-a-Service(XaaS) Products: 87% of Net Revenue

    All on-premise software Products: 80% of Net Revenue

    In each case, such Vendor Payments shall exclude any applicable deductions as described in Section 6 of the Agreement.

    1. True Up
        a. At the end of each calendar year, to the extent either party reasonably believes IBM's Vendor Payments made during that calendar year do not accurately reflect the actual amount of Vendor Payments due, such party may request that the parties meet to review the potential discrepancy and the other party shall participate in such meeting. If the parties mutually agree that a discrepancy exists, then they will follow the following process to resolve it:
            i.   If the actual amount paid by IBM exceeds the amount due to Vendor, the difference will be added to a balance and IBM will use the balance amount as a credit to be applied against subsequent Vendor Payments.
            ii. If the amount due exceeds the actual amount paid by IBM, then there will be a positive adjustment for the amount owed ("Underpayments"). The adjustment for Underpayments will be made the last business day of the second calendar month following the month when the adjustment amount was determined, unless the last day

of the month falls on a weekend or holiday, in which case it will then be made by the next business day, after the parties reach mutual agreement regarding the amount of the Underpayment. A royalty month ends on the last day of the calendar month. All payments will be made in U.S. dollars.

iii. If the Agreement is terminated, any remaining payments due to the Vendor will be made the last business day of the second calendar month following the month when the agreement is terminated, unless the last day of the month falls on a weekend or holiday, in which case it will then be made by the next business day. A royalty month ends on the last day of the calendar month. All payments will be made in U.S. dollars. If there is an over payment by IBM, Vendor must repay the overpayment amount within 60 days of the expiration or termination of the Agreement.

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Standards and Best Practices for EULAs Attachment

Target audience: IBM Digital Platforms target enterprise clients who generally have internal policies for accepting EULAs and legal staff who will carefully review every EULA. Therefore, it is in your best interest to provide a EULA that will be acceptable to that audience and keep to a minimum the delay caused by negotiation of terms (which can delay a purchase by months).

Single document: The URL provided for the Vendor EULA must take the IBM Client to a landing page or document that is the specific terms of use for the product the IBM Client is acquiring. The URL must not take the IBM Client to a landing page that has multiple EULAs that refer to other products that the IBM Client is not purchasing, which may confuse the IBM Client about the terms they are accepting.

Click to accept: The Vendor EULA will be presented to the IBM Client as a click to accept agreement between the IBM Client and Vendor, forming part of the set of contract documents that IBM provides to the IBM Client, when they are acquiring the product from IBM. The Vendor EULA should not include signature pages or attachments that are designed for a signature document. Simply reusing an agreement that has that extra material may confuse the IBM Client about the terms they are agreeing to.

Subscription model: IBM Clients will be acquiring your Product from IBM under a subscription model. Therefore, the Vendor EULA must clearly cover the subscription model as one of the usage scenarios. Having both subscription and perpetual purchase terms (and trial terms) in the same EULA is acceptable, but not preferred since it is more confusing for the client.

Support: Every Product included in an IBM Digital Platform must provide standard support and updates/fixes. Therefore, the Vendor EULA must state that Support is provided. The Vendor EULA cannot state that Support is not provided as that conflicts with the Agreement.

Billing, payments and taxes: These terms of sale are handled by IBM or IBM affiliates . Your Vendor EULA should not confuse the user with statements about billing, payments and taxes directly to you or another third party that you may use for other channels.

Global: Your Vendor EULA must be valid for use in, and comply with, any local requirements of any geography in which you choose to make your Product available for resale by IBM through the IBM Digital Platform.

Digital Listing Agreement Privacy and Security Attachment

1. The IBM Privacy and Security Terms, at https://www.ibm.com/procurement/privacy-and-security-terms.html, as updated from time to time (the "Terms"), apply with respect to Vendor's participation in Digital Platforms as described in the Agreement. The parties agree that the following Articles (or their successors) of the Terms do not apply as of the effective date of the Agreement:

    a. Article IV – Technical and Organizational Measures, Code Security
    b. Article V – Secure Development
    c. Article VI – Corporate Systems' Access
    d. Article VII – Staff Augmentation
    e. Article IX – Hosted Services' Certifications and Reports

    Depending on the nature of the Services performed by Vendor, other Articles may also not apply. The Vendor can determine which Articles apply by checking the boxes on the landing page of the Terms. If the scope of Services performed by Vendor under the Agreement changes, additional Articles may become relevant and will apply in accordance with the Terms. In the event of conflict between the Terms and this Attachment or the Agreement, the Terms will prevail.

2. Capitalized terms used but not defined in this Attachment have the meanings given to them in the Terms. References in the Terms to a Transaction Document, including any Statement of Work, Work Authorization, or other agreement shall mean this Digital Platform Reseller Agreement. References in the Terms to Supplier shall mean Vendor.

3. The Terms reference an Exhibit to a Transaction Document that sets out the following in respect of IBM Data:

    a. categories of Data Subjects;
    b. types of IBM Personal Data;
    c. Processing activities;
    d. duration of Processing; and
    e. list of Subprocessors.

    For purposes of this Agreement, the Exhibit referenced in the Terms is included as an Exhibit to this Attachment.

4. Vendor will maintain at its expense a Cyber liability insurance policy for up to $10,000,000 per claim and in the aggregate which shall cover all Vendor costs, including damages it is obligated to pay IBM or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Personal Data (as defined in the Terms), regardless of cause, including, but not limited to, third party claims arising from a Security Breach or loss of Personal Data, including litigation costs and settlement costs. For the purposes of this paragraph 4 only, "Security Breach" means (1) the failure by Vendor to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure or unauthorized access or use of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of Vendor's privacy policy or misappropriation that results in the violation of any applicable data

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privacy laws or regulations; or (3) any other act, error, or omission by Vendor in its capacity as such which is reasonably likely to result in the unauthorized disclosure of or access to Personal Data (or a reasonable belief there has been an unauthorized disclosure).

<u>EXHIBIT TO PRIVACY AND SECURITY ATTACHMENT</u>
PROCESSING DETAILS

As set out in the Digital Listing Agreement Privacy and Security Attachment, this Exhibit identifies the following in respect of the Agreement: (a) categories of Data Subjects, (b) types of IBM Personal Data, (c) Processing activities, (d) duration of Processing, and (e) a list of Subprocessors.

This Exhibit, including Section 1 and Section 2, shall serve as Appendix 1 of the EU SCC, if applicable.

Capitalized terms used in this Exhibit have the meanings given in the terms.

1. **Data Exporter**

The data exporter is IBM and if applicable Other Controllers that are subject to Data Protection Laws requiring EU SCCs for the transfer of Personal Data.

2. **Data Importer**

The data importer is the Vendor, if Vendor is not located in an Adequate Country and is subject to Data Protection Laws requiring EU SCCs for the transfer of Personal Data.

3. **Data Subjects**

The following lists the categories of Data Subjects whose Personal Data generally are or can be Processed within the Service:

- ☒ IBM's employees (including temporary workers, volunteers, assignees, trainees, retirees, pre-hires/applicants)
- ☒ Other Controller's employees (including temporary workers, volunteers, assignees, trainees, retirees, pre-hires/applicants)
- ☒ IBM's (potential) clients
- ☒ Other Controller's (potential) clients
- ☒ Employees of IBM's (potential) clients
- ☒ Employees of Other Controller's (potential) clients
- ☒ IBM's business partners
- ☒ Other Controller's business partners
- ☒ Employees of IBM's business partners
- ☒ Employees of Other Controller's business partners
- ☐ IBM's visitors
- ☐ Other Controller's visitors
- ☒ IBM's suppliers and subcontractors
- ☒ Other Controller's suppliers and subcontractors
- ☒ Employees of IBM's suppliers and subcontractors
- ☒ Employees of Other Controller's suppliers and subcontractors
- ☒ IBM's agents, consultants and other professional experts (contractors)
- ☒ Other Controller's agents, consultants and other professional experts (contractors)
- ☐ Other: _____

4. **Types/Categories of IBM Personal Data**
   - ☒ general personal data (e.g. name; data and place of birth; age; (e-mail) address; phone number, photo, education; family status; nationality)
   - ☒ (online) identification numbers (e.g. social security number; tax identification number; health insurance number; ID card number; passport number; personnel number, license number; matriculation number, IP addresses)
   - ☐ banking data (e.g. account number, credit (card) information, account balance)
   - ☐ physical characteristics (e.g. sex; hair-, eye colour; stature; size)
   - ☒ factual circumstances/possession feature (e.g. ownership of cars or real estate, license plate numbers; car/property registration data, income, liabilities/depts, assets)
   - ☐ value judgements (e.g. school reports, employer references, recommendations, valuations)
   - ☒ Location identifiers (i.e., geo-location)
   - ☒ Job category (i.e., occupation, title)
   - ☒ system access / usage / authorization data
   - ☐ Other: _____

5. **Special Categories of Personal Data**
   - ☐ Personal Data revealing racial or ethnic origin
   - ☐ Personal Data revealing political opinions
   - ☐ Personal Data revealing religious or philosophical beliefs
   - ☐ Personal Data revealing trade union membership
   - ☐ Genetic or biometric data
   - ☐ Data concerning health
   - ☐ Data concerning a natural person's sex life or sexual orientation
   - ☐ Personal Data relating to criminal convictions and offenses
   - ☒ None of the above

6. **Nature, purpose and subject matter of the Processing / Processing Operations**

   The purpose and subject matter of the Processing is the provision of the Contracted Services.

   The personal data transferred will be subject to the following basic processing activities:
   - ☒ Data Storage (record, host, log, archive or otherwise store IBM Personal Data)
   - ☒ Data Access (retrieve, copy, examine, modify, transport, scan, or otherwise access IBM Personal Data)
   - ☒ Data Analysis (survey, test, study, interpret, organize, report, or otherwise analyze IBM Personal Data)
   - ☐ Other: _____

7. **Duration of the Processing**
   - ☒ The duration of the Processing corresponds to the duration of the respective Agreement and any applicable SOW(s).

8. **List of Subprocessors**

IBM

Vendor must provide a list of subprocessors, if any, using the web form provided as part of the Red Hat Marketplace onboarding process, which is incorporated by reference into this Exhibit. For any subprocessor, Vendor must provide: Name of Subprocessor, Address of Subprocessor, and Contracted Services/Processing provided by the Subprocessor.

9. Means of notification of changes of Subprocessors

Vendor will notify IBM of any intended changes to Subprocessors via emails to the following email address or a successor, as notified by IBM: HybridDRA@us.ibm.com.

10. Support

If Vendor will have access to diagnostic data, such as error logs and user information, in the context of the Services (e.g., handling a support request), that diagnostic data may contain the types of Personal Data and Sensitive Personal Data referenced above. So, for the purpose of ensuring accuracy, the parties are deemed to have checked the boxes corresponding to the actual data that Vendor accesses in providing Services, even if they checked less than all of those boxes above.