

IBM Marketplace Provider Agreement

BY ACCESSING, BROWSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE IBM MARKETPLACE, 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 Marketplace Provider Agreement (the "Agreement") sets forth the terms and conditions under which Provider may offer one or more Products in the IBM Marketplace.

1. Agreement Structure

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

2. Definitions

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

IBM Marketplace – the Internet environment hosted by or on behalf of IBM that includes: (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.

Product – a service, product 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 electronically to Users through the IBM Marketplace Referral Program.

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

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

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

Integration APIs – technical programming interfaces documented which may be available through Provider Workbench, including APIs for user management, provisioning, upgrade, downgrade, import, sync, APIs for integrating with other IBM platforms for each Product.

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 IBM Marketplace.

Referral Program – the IBM Marketplace program, whereby the User can be directed to Provider’s website for Product and purchase transactions.

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.

3. **Provider Criteria**

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

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

4. **Product and Product Listings**

4.1 **Product Criteria**

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

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

4.2 Product Listing and Publication

Provider will work cooperatively with IBM to publish its first 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 Marketplace. Your 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.

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 IBM Marketplace as necessary to maintain overall IBM Marketplace consistency and integrity. IBM will notify Provider of any changes required to the Product listing if the Product listing is already published on the IBM Marketplace. If Provider does not accept IBM's proposed changes to the Product listing, Provider may choose to withdraw the Product listing from the IBM Marketplace as set forth in Section 10 (Term and Termination).

4.3 Listing Duration

Provider shall make the Product listings available in 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.

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

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

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

4.5 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 Provid-

er'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 the Product Fees and associated terms, if applicable;
- c) set forth Provider's security and privacy policies;
- d) not impose any requirements or liability upon IBM; and
- e) If the Product is hosted, or includes hosted components, 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.

4.6 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 pursuant to the terms herein. Provider shall be entirely responsible for its personnel to whom it designates administrative access for each Product listing and Provider shall ensure such personnel shall comply with the terms of this Agreement. IBM has the right to review and approve all Product listings prior to publication. 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 content that may be subject to any such regulations or required additional security measures. Provider is solely responsible for all necessary third party permissions to include its content in PWB and Provider grants IBM permission to use, store and process the content in the delivery of PWB and the IBM Marketplace.

Use of PWB in a production environment or for commercial or production purposes, or for performance stress testing, is not permitted. IBM does not authorize use of PWB for any unlawful or inappropriate purposes, such as gambling, obscenity, pornography, violence, misappropriation, unauthorized access or interference, viruses or harmful code, harassment, unsolicited or deceptive messages, or evading filters. Any such use is prohibited. You are not authorized to use PWB to provide hosting or timesharing services to any third party. 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.

5. Responsibilities

5.1 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 costs associated therewith;
- c) be responsible for creating and maintaining Marketplace Provider Material regarding Marketplace Provider's Product;
- d) 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;
- e) comply with the Acceptable Internet Use Policy for IBM Services set forth at <http://www.ibm.com/services/aup.html>. Provider is responsible for checking the Acceptable Internet Use Policy periodically for changes and Provider's continued participation in the IBM Marketplace constitutes Provider's acceptance of and agreement to any such changes;
- f) not include any confidential information in the IBM Marketplace or its Product listing;
- g) not perform any technical security test, penetration test, or vulnerability scan of the IBM Marketplace;
- h) 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
- i) obtain all necessary permissions to use, provide, store and process content in the IBM Marketplace and grants IBM permission to do the same.

5.2 IBM Responsibilities

IBM will:

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

6. License Grants

6.1 License Grant to IBM

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

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 Marketplace Product or Provider Material except as explicitly set forth herein.

6.2 License Grant to Provider

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

Except as set forth in this Section, IBM and its licensors retain exclusive right, title and interest in and to (a) the IBM Marketplace, (b) all visual interfaces, text, graphics and other content included on the IBM Marketplace; (c) all underlying technology, software, data, and other materials that implement and/or operate the IBM Marketplace (including 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).

7. Fees

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

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

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

8. Disputes and Complaints

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.

9. Compliance

9.1 Export Laws

Provider will comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). 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.

Provider acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of the IBM Marketplace. Upon request, Provider will provide to IBM the classification of the

Product under the U.S. Export Administration Regulations and reasonably work with IBM to ensure compliance with applicable export controls based on this classification.

9.2 Compliance With Laws

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

9.3 Prohibition on Gifts

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

9.4 Confidentiality and Data Protection

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

IBM, its affiliates, and their third party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the IBM Marketplace. Account data is all information about you or your users provided to or collected by IBM (including through tracking and other technologies, such as cookies), which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

10. Term and Termination

10.1 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 Marketplace, unless terminated earlier as described below.

10.2 Termination

- a) IBM may terminate this Agreement for any reason or no reason with ninety (90) days written notice to 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 Marketplace for twelve (12) months as set forth in Section 4.3.
- d) Notwithstanding the terms of Section 4.3, Provider may terminate this Agreement and remove the Product listing from the IBM Marketplace 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 the Provider Agreement and Provider does not agree to such changes.

11. Suspension and Removal

- a) IBM may suspend a Product listing from the IBM Marketplace (i.e. temporarily “hide” the Product listing from public view) at any time due to Provider’s breach of this Agreement, misappropriation of IBM or third party intellectual property or violation of applicable law or regulation, or for any other reason in IBM’s sole discretion. Once suspended, Provider shall be provided with thirty (30) days notice to resolve or cure any such breach, misappropriation, or violation. At the end of such thirty (30) day period, IBM shall either (i) restore the Product listing if such breach, misappropriation or violation is resolved to IBM’s satisfaction; or (ii) remove the Product listing from the IBM Marketplace, provided that if such Product listing is removed by IBM, IBM shall provide Provider with written notice and explanation of its removal.
- b) Provider may suspend or remove Provider’s Product listing from the IBM Marketplace upon ninety (90) days prior written notice to IBM after offering the Product on the IBM Marketplace as set forth in Section 4.3.

12. Confidentiality

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

13. 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) any written representations made or information provided by Provider to IBM or Users is true and accurate;
- d) neither the Product nor the Provider Material infringes any patent, copyright, trademark or trade secret or any other intellectual property rights of any third party;
- e) Provider shall take all commercially reasonable steps to safeguard and prevent its Product from containing any virus, mal-ware, or other harmful code; and
- f) Provider has complied with any and all third party requirements relating to any and all third party and open source software included in the Product.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY, NOR THEIR RESPECTIVE SUPPLIERS, MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTIC-

ULAR PURPOSE. NEITHER IBM NOR ITS SUPPLIERS MAKE ANY WARRANTIES THAT ANY PARTICULAR RESULTS WILL BE DERIVED FROM THE USE OF THE IBM MARKETPLACE OR ANY DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

14. Indemnification

Provider will defend, indemnify and hold IBM and its Affiliates harmless with respect to any third party claims related to its Product(s), provided IBM promptly (i) notifies 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.

15. Limitation of Liability

15.1 Limitation of Liability

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

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 MARKETPLACE.

15.2 Damages Excluded from Limitation of Liability

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

16. Business Contact Information

Provider agrees that IBM and its subcontractors may 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.

17. 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 in the parties' web sites, external presentations, advertising, and marketing materials for the IBM Marketplace. IBM will not display Provider's name and logo in an inaccurate, derogatory, confusing or misleading man-

ner, 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.

18. General

a) Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

b) In the event that IBM receives a notice of copyright infringement concerning the Products, where the notice conforms to the then current requirements of the Digital Millennium Copyright Act (DMCA), IBM will immediately suspend the Products listing in the IBM Marketplace. In the event IBM takes such action, Provider may provide a counter notice to IBM which conforms to the then current requirements of the DMCA and IBM will, in its sole discretion, restore the Products to the IBM Marketplace. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Provider for action. IBM's current policy regarding the DMCA and its requirements can be found at <http://www.ibm.com/legal/us/en/dmca.html>. In the event the DMCA is amended, IBM will modify the referenced url to reflect such changes. In the event of a discrepancy between the IBM website and the DMCA, the DMCA will prevail. IBM disclaims all responsibility for lost profit and/or revenue during the period in which the Products are removed or suspended.

c) The laws of the State of New York govern the rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to its conflict of law principles.

d) Any notice required or permitted under this Agreement will be sent to the focal point representatives set forth by both parties. IBM contact information will be listed in the IBM Marketplace. Provider contact information will be included in the Product listing.

e) If any term of this Agreement is found to be unenforceable in any respect, the validity of the remainder of the Agreement will be unaffected.

f) A waiver of any right under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's non-compliance with any obligation under this Agreement will not be deemed a waiver of subsequent instances.

g) 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 Provider of the other, and neither party is an employee or franchisee of the other, nor does the Agreement create a joint venture between the parties.

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

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

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

Appendix A: Country Required Terms

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

AUSTRALIA

9.2 Compliance With Laws

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

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

16 Business Contact Information

The following replaces this clause:

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.

18 General

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

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

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

"State or Territory in which the transaction is performed"

EUROPE, MIDDLE EAST AND AFRICA

UK - Representations and Warranties

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

UK – Limitation of Liability

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

UK – Damages Excluded from Limitation of Liability

Add to section

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

UK – Business Contact Information

[Add to section](#)

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