



IBM Cloud Marketplace Business Partner Agreement

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

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

1. Agreement Structure

The complete agreement governing Marketplace Business Partner's Cloud Product in the Cloud Marketplace consists of this Agreement including applicable country required terms in Appendix A, the Marketplace Business Partner Agreement Supplement ("Marketplace Supplement") if applicable, any applicable Attachments, and the Marketplace Business Partner Policies. This Agreement governs all Cloud Products offered by Marketplace Business Partner in the Cloud Marketplace. This Agreement and applicable Attachments supersede any prior discussions or representations regarding Marketplace Business Partner's participation in the Cloud 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.

Cloud Marketplace – the internet environment hosted by or on behalf of IBM that includes the Marketplace Business Partner Portal, Support Portal, and the catalog of Cloud Products from IBM and Marketplace Business Partners that are available to Cloud Users to acquire and use.

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

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

Cloud User – a user of the Cloud Marketplace or IBM Premium Platform that accesses the Cloud Products.

Cloud User Policies – the IBM policies and procedures for Cloud Users available at docs.marketplace.ibmcloud.com/end_user_policy.html.

Error – a) any mistake, problem or defect ("bug") that causes a Cloud 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 Cloud Product to be materially inaccurate or inadequate.

IBM Premium Platform – other cloud computing environments that IBM makes available to Cloud Users separately from Cloud Marketplace. Cloud Users can acquire Cloud Products that can be used in conjunction with these IBM Premium Platforms. Marketplace Business Partner Cloud Products may be integrated with these IBM Premium Platforms, (for example, IBM Bluemix is an IBM Premium Platform).

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

Marketplace Business Partner – the party to this Agreement who has accepted the terms of this Marketplace Business Partner Agreement and makes its Cloud Product available in the Cloud Marketplace. A Marketplace Business Partner may also be an IBM Business Partner with separate legal

agreements in place for that relationship. For this agreement Marketplace Business Partner is referring to a party without regard to other relationships with IBM.

Marketplace Business Partner Fees – the fees payable by IBM to Marketplace Business Partner as defined in this Agreement or the Marketplace Supplement.

Marketplace Business Partner Guide – technical information provided on the Marketplace Business Partner Portal that provides detailed information for Integration APIs, implementation details for IBM Premium Platforms and other detailed instructions.

Marketplace Business Partner Material – trademarks and other promotional material, documentation, and other information that the Marketplace Business Partner uploads and submits to its account on the Marketplace Business Partner Portal.

Marketplace Business Partner Policies – the IBM policies and procedures for Marketplace Business Partners and Cloud Products set forth at docs.marketplace.ibmcloud.com/businesspartner_policies.html, which IBM may change at any time in its sole discretion.

Marketplace Business Partner Portal – the password-protected Internet portal that is part of the Cloud Marketplace that enables Marketplace Business Partners to create and manage Cloud Product listings including pricing and distribution options.

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

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

Support Portal – the section of the Cloud Marketplace that contains information on obtaining support from IBM for the Cloud Marketplace, including contact information, support tools, and other support information.

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 on sales of Cloud Products, or sales, use, transfer, goods and services or value added tax or any other duties or fees related to any payment made by IBM to Marketplace Business Partner for Cloud Products provided by Marketplace Business Partner to Cloud Users under or pursuant to this Agreement; exclusive, however, of any taxes imposed upon the net income or capital of Marketplace Business Partner and any taxes in lieu of such net income taxes and any other taxes which are to be borne by Marketplace Business Partner under law.

3. Cloud Product Requirements

3.1 Implementation

Marketplace Business Partner will use the Marketplace Business Partner Portal to create, maintain, and appropriately categorize its Cloud Product listing in the Cloud Marketplace, as set forth in the Marketplace Business Partner Policies. The Cloud Product may require technical integration with the Cloud Marketplace or an IBM Premium Platform via Integration APIs and protocols, including support for single sign-on. Cloud Product categories and technical integration requirements are set forth in the Marketplace Business Partner Policies.

Notwithstanding the foregoing, IBM has the right but not the obligation to review and approve the Cloud Products and Marketplace Business Partner Material and integration compliance before such Cloud Products or Marketplace Business Partner Material is made available to Cloud Users. IBM's review, testing, approval, or publication of a Cloud Product will not relieve Marketplace Business Partner of responsibility for developing Cloud Products that are safe, free of defects in design and operation, comply with applicable laws and regulations, or for any documentation, Support, or warranty of the Cloud Product. IBM may require updates or make changes to the Cloud Product listing before publishing the Cloud Products to the Cloud Marketplace as necessary to maintain overall Cloud Marketplace consistency and integrity. IBM will notify Marketplace Business Partner of any changes made to the Cloud Product listing if the Cloud Product is already published on the Cloud Marketplace. If Marketplace Business Partner does not accept the IBM changes to the Cloud Product listing, Marketplace Business Partner may choose to withdraw the Cloud Product from the Cloud Marketplace as set forth in Section 11 (Term and Termination).

3.2 Editions

Marketplace Business Partner will offer at least one priced edition of each Cloud Product and such priced edition will include at least a thirty (30) day free trial period. Marketplace Business Partner may also offer a separate free edition. IBM Premium Platforms may require a separate free edition. Marketplace Business Partner will offer at least the most current version of the priced edition that is offered by Marketplace Business Partner on similar marketplaces or channels. Marketplace Business Partner may limit access to or capabilities of the free edition or the free trial period in Marketplace Business Partner's sole discretion.

Marketplace Business Partner will make the Cloud Product available to Cloud Users, with substantially the same capabilities, for a minimum of one year. Marketplace Business Partner may remove the Cloud Product from the Cloud Marketplace upon the one year anniversary of its listing, provided Marketplace Business Partner gives all subscribing Cloud Users ninety (90) days written notice prior to any removal that such Cloud Product will be removed from the Cloud Marketplace.

3.3 Support

Marketplace Business Partner is solely responsible for all Errors or issues associated with its Cloud Product and for providing all Support for its Cloud Product for as long as the Cloud Product is offered on the Cloud Marketplace. Marketplace Business Partner must provide at least the minimum Support methods set forth in the Marketplace Business Partner Policies.

IBM will provide support to Marketplace Business Partner and Cloud Users for the Cloud Marketplace. IBM will provide contact information for support for the Cloud Marketplace on the Support Portal.

In the event IBM receives a support inquiry related to Marketplace Business Partner's Cloud Product, IBM will determine if the Error is with the Cloud Product or the Cloud Marketplace. In the event the Error is determined to be with the Cloud Product, IBM will either contact the Marketplace Business Partner or will direct the Cloud User to contact Marketplace Business Partner directly.

3.4 Terms

Except for billing and payment provisions, Marketplace Business Partner will provide all terms of use or end user license agreements and all use of the Cloud Products will be subject to the Marketplace Business Partner's terms of use or end user license agreement, including all provisions and obligations as set forth in this Agreement. All licenses or terms of use governing Cloud Products will be directly between the applicable Cloud User and Marketplace Business Partner. IBM is not a party to such license or terms of use; however, IBM reserves the right in its sole discretion to reject Marketplace Business Partner's terms of use or end user license agreement and suspend or remove the Cloud Product. At a minimum, the terms of use or end user license agreements will:

- a) grant Cloud Users and Cloud Users' licensees the right to redistribute Marketplace Business Partner's Cloud Products embedded in such parties' developed works;
- b) provide an indemnity, the same or substantially similar to the indemnity provided in Section 15 (Indemnification), to Cloud Users for any third party claims alleging violation or infringement of intellectual property rights;
- c) set forth Marketplace Business Partner's security policies;
- d) not impose any requirements or liability upon IBM; and
- e) not override any IBM terms under this Agreement or the IBM Cloud Service Agreement and Service Description available at docs.marketplace.ibmcloud.com/terms.html.

4. Responsibilities

4.1 Marketplace Business Partner Responsibilities

Marketplace Business Partner will:

- a) ensure that the Cloud Product performs to the level described, and any statements made for references, Support capability, performance, security, service level agreements, or other business or technical capabilities are accurate and supported by Marketplace Business Partner;
- b) provide timely Support to identify and correct any known or reported Errors in its Cloud Product;
- c) be responsible for development, implementation, full testing, and management of the Cloud Product and all costs associated therewith;

- d) be responsible for creating and maintaining Marketplace Business Partner Material regarding Marketplace Business Partner's Cloud Product;
- e) provide any applicable terms of use or end user license agreements related to the use of its Cloud Products in its Cloud Marketplace listing, and maintain such terms of use or license agreements and access thereto;
- f) provide a privacy policy related to the use of its Cloud Products by Cloud Users in its Cloud Marketplace listing;
- g) securely manage; i) any customer information received from Cloud Users, ii) passwords for Cloud Users and iii) any other access identifications or credentials used for its Cloud Product;
- h) comply with the Marketplace Business Partner Policies set forth at docs.marketplace.ibmcloud.com/businesspartner_policies.html and the Acceptable Internet Use Policy for IBM Services set forth at www.ibm.com/services/aup.html. Marketplace Business Partner is responsible for checking the Marketplace Business Partner Policies and the Acceptable Internet Use Policy periodically for changes and Marketplace Business Partner's continued participation in the Cloud Marketplace constitutes Marketplace Business Partner's acceptance of and agreement to any such changes;
- i) not include any confidential information in the Cloud Marketplace or its Cloud Product; and
- j) not perform any technical security test, penetration test, or vulnerability scan of the Cloud Marketplace.

4.2 IBM Responsibilities

IBM will:

- a) provide reasonable technical assistance as required for registering Marketplace Business Partner's Cloud Product in the Cloud Marketplace and integrating the Cloud Product with the Cloud Marketplace APIs or other IBM Premium Platform APIs;
- b) review and publish the Cloud Product to the Cloud Marketplace if approved by IBM, as described in Section 3 (Implementation) above;
- c) provide Cloud Users access to Marketplace Business Partner's terms of use or end user license agreement at the time of purchase; however, IBM is not obligated to obtain the Cloud user's express acceptance of such terms;
- d) provide physical access security for the Cloud Marketplace; and
- e) provide Cloud User access and authorization controls for the Cloud Marketplace.

5. License Grants

5.1 License Grant to IBM

During the term of this Agreement, Marketplace Business Partner grants IBM and its Affiliates a worldwide, non-exclusive, paid-up right and license to 1) register its Cloud Product in the Cloud Marketplace, 2) make such Cloud Product available to Cloud Users, 3) use Marketplace Business Partner Material anywhere within the Cloud Marketplace, 4) test the Cloud Product for security, integration, and known or reported Errors, and 5) demonstrate the Cloud Product for marketing purposes.

Marketplace Business Partner acknowledges that IBM may rebrand the Cloud Marketplace as a Private Label Marketplace. Except for the rights granted herein, IBM will not grant additional rights to the Private Label Marketplace for use of Marketplace Business Partner's name or trademarks without consent of Marketplace Business Partner. IBM acknowledges that the Cloud Product is solely the property of Marketplace Business Partner and its licensors, and nothing in, this Agreement confers upon IBM any intellectual property rights in the Marketplace Business Partner Cloud Product except as explicitly set forth herein.

5.2 License Grant to Marketplace Business Partner

During the term of this Agreement, IBM grants Marketplace Business Partner a worldwide, non-exclusive, paid-up right and license to access and use the Integration APIs and related documentation made available by IBM through the Cloud Marketplace for the sole purpose of integrating Marketplace Business Partner's Cloud Products into the Cloud Marketplace or Private Label Marketplace for access and purchase by Cloud Users.

Except as set forth in this Section 5.2 (License Grant to Marketplace Business Partner), IBM or its supplier retains exclusive right, title and interest in and to (a) the Cloud Marketplace, (b) all visual interfaces, text, graphics and other content included on the Cloud Marketplace; (c) all underlying technology, software, data, and other materials that implement and/or operate the Cloud Marketplace (including the Integration APIs); (d) any and all modifications and enhancements and derivative works made to (a) through (d); and (e) any and all intellectual property rights in or related to (a) through (d).

6. Fees

Marketplace Business Partner will determine the Cloud Product Fees using the available payment plan options available in the Marketplace Business Partner Portal. IBM will be responsible for charging Cloud Users the Cloud Product Fees and collecting payment from the Cloud Users, including all applicable Taxes.

IBM will pay Marketplace Business Partner the Marketplace Business Partner Fees equal to eighty percent (80%) of the Cloud Product Fees. IBM may change the Marketplace Business Partner Fees and other financial terms with sixty (60) days notice to Marketplace Business Partner. Continued usage of the Cloud Marketplace means Marketplace Business Partner accepts the change.

As set forth in the Marketplace Business Partner Policies, certain payment plans (and subsequent payment of the Marketplace Business Partner Fees) may require Marketplace Business Partner to collect usage information for each Cloud Product subscription and report such information to IBM. Failure of Marketplace Business Partner to provide such information may result in IBM's failure to pay Marketplace Business Partner and suspension or removal of the Cloud Product from the Cloud Marketplace or termination of this Agreement.

Marketplace Business Partner agrees that the Cloud Product Fees offered to Cloud Users will be no less favorable than the fees offered to any other party purchasing or licensing similar quantities under similar terms. In the event Marketplace Business Partner offers more favorable fees to any other party while this Agreement is in effect, Marketplace Business Partner will notify IBM of such event and offer such more favorable Cloud Product Fees to IBM commencing upon the date such more favorable fees were offered to the other party.

7. Refunds and Credits

IBM will be the contact for refunds, credits and billing disputes from Cloud Users. IBM will publish refund, credit, and billing dispute policies and procedures for Cloud Users in the Cloud User Policies. IBM will publish refund, credit, and billing dispute policies and procedures for Marketplace Business Partners in the Marketplace Business Partner Policies.

If IBM refunds the Cloud User the Cloud Product Fee for any reason, IBM may deduct the Marketplace Business Partner Fee, if previously paid to Marketplace Business Partner, from the next scheduled Marketplace Business Partner Fee payment. IBM will make the final decision on credits and refunds in its sole discretion.

8. Disputes and Complaints

Marketplace Business Partner will be responsible for receiving, handling, and resolving all Cloud User complaints about the Cloud Product, including complaints regarding service level agreements, performance, outages, response times, features and function of the Cloud Product, and any other Cloud User satisfaction issues for the Cloud Products. IBM will publish the complaint policies and procedures in the Cloud User Policies.

9. Taxes

Each party is responsible for complying with the collection, payment, and reporting of all Taxes imposed by any governmental authority applicable to its activities in connection with the sale, lease, delivery or usage of a Cloud Product under this Agreement. Neither party is responsible for Taxes that may be imposed on the other party. Situations may arise where governmental authorities require IBM to withhold from amounts payable to the Marketplace Business Partner. In such cases, IBM may withhold the amount of Taxes due from payments to be made to the Marketplace Business Partner under this Agreement and remit the net proceeds thereof. IBM agrees to timely remit all Taxes withheld to the appropriate governmental authority. Upon request, IBM will provide the Marketplace Business Partner with documentation evidencing the withholding amount. For fulfillment of Cloud Products and other assets under the Agreement, Marketplace Business Partner agrees no tangible personal property

(including media and publications) will be delivered to Cloud Users, Each party agrees to cooperate to minimize any applicable Taxes including reasonable notice and cooperation in connection with any audit.

10. Export Laws

Marketplace Business Partner will comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Marketplace Business Partner represents that the Cloud Product will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulations (ITAR) or the defense trade control regime of any other country.

Marketplace Business Partner acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of the Cloud Marketplace. Marketplace Business Partner will provide to IBM the classification of the Cloud Product under the U.S. Export Administration Regulations and reasonably work with IBM to ensure compliance with applicable export controls based on this classification.

11. Term and Termination

11.1 Term

This Agreement is effective upon the date that IBM makes the Cloud Marketplace commercially available ("Marketplace GA Date"), and will remain in effect as long as Marketplace Business Partner offers one or more Cloud Products on the Cloud Marketplace, unless terminated earlier as described below. IBM will provide ten (10) days prior written notice to Marketplace Business Partner of the Marketplace GA Date. Marketplace Business Partner's continued participation in the Cloud Marketplace constitutes Marketplace Business Partner's continued acceptance of and agreement to this Agreement.

11.2 Termination

- a) IBM may terminate this Agreement for any reason or no reason on ninety (90) days written notice to Marketplace Business Partner. Upon receiving such notice, Marketplace Business Partner will provide written notice to all subscribing Cloud Users of the withdrawal of any applicable Cloud Products resulting from such termination.
- 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. Upon notice of any uncured breach (whether the breaching party be IBM or Marketplace Business Partner), Marketplace Business Partner will provide written notice to all subscribing Cloud Users of the withdrawal of any applicable Cloud Products resulting from such termination.
- c) Marketplace Business Partner may terminate this Agreement for any reason or no reason on ninety (90) days written notice to IBM after offering the Cloud Product on the Cloud Marketplace for twelve (12) months as set forth in Section 3.2 (Editions).
- d) Notwithstanding the terms of Section 3.2 (Editions), Marketplace Business Partner may terminate this Agreement and remove the Cloud Product from the Cloud Marketplace if Marketplace Business Partner provides all subscribing Cloud Users with ninety (90) days written notice and:
 - i. IBM fails to pay Marketplace Business Partner as set forth in Section 6 (Fees) or in the Marketplace Supplement and such failure to pay is not cured within ninety (90) days; or
 - ii. Marketplace Business Partner withdraws the Cloud Product from any and all public offerings, or
 - iii. IBM changes Marketplace Business Partner Fees and Marketplace Business Partner does not agree to such change.

12. Suspension and Removal

- a) IBM may remove or suspend the Cloud Product from the Cloud Marketplace at any time due to Marketplace Business Partner'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. IBM may restore the Cloud Product if such breach, misappropriation or violation is resolved within thirty (30) days from notice of such breach.

- b) Marketplace Business Partner may suspend or remove Marketplace Business Partner's Cloud Product from the Cloud Marketplace upon ninety (90) days prior written notice to IBM after offering the Cloud Product on the Cloud Marketplace as set forth in Section 3.2 (Editions), provided Marketplace Business Partner gives all subscribing Cloud Users ninety (90) days written notice of such withdrawal.

13. Confidentiality

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

14. Representations and Warranties

Marketplace Business Partner represents and warrants that:

- a) Marketplace Business Partner has the necessary rights in and to the Cloud Product (including associated marks and names) to grant IBM the rights specified in this Agreement, and to grant Cloud Users the rights specified in the Marketplace Business Partner's terms of use or end user license agreement, as applicable;
- b) the Cloud Product conforms to its specifications;
- c) any written representations made or information provided by Marketplace Business Partner to IBM or Cloud Users is true and accurate;
- d) neither the Cloud Product nor the Marketplace Business Partner Material infringes any patent, copyright, trademark or trade secret or any other intellectual property rights of any third party;
- e) the Cloud Product does not contain any virus, mal-ware, or other harmful code; and
- f) Marketplace Business Partner has complied with any and all third party requirements relating to any and all third party and open source software included in the Cloud Product.

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

15. Indemnification

Marketplace Business Partner will defend, indemnify and hold IBM and its Cloud Marketplace technology supplier harmless with respect to any third party claims alleging a breach of the representations and warranties set forth in Section 14 (Representations and Warranties). IBM and its Cloud Marketplace technology supplier may participate in the proceedings at its option and expense.

16. Limitation of Liability

16.1 Limitation of Liability

Except as expressly set forth in Section 16.2 (Damages Excluded from Limitation of Liability), each party's entire liability for all claims in the aggregate arising from or in connection to the Cloud Marketplace, a Cloud Product, or this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to \$10,000.00, regardless of the basis of the claim. This limit applies collectively to each party and each party's Affiliates and contractors. Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill, anticipated savings; loss of, or damage to, data (including personal data); or network failure or interruption.

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

16.2 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 15 (Indemnification).

17. Business Contact Information

Marketplace Business Partner agrees that IBM and its subcontractors may process the business contact information of Marketplace Business Partner as a legal entity, and Marketplace Business Partner's employees and contractors worldwide, in furtherance of our business relationship, in compliance with applicable data privacy laws. Marketplace Business Partner 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.

18. Marketing Rights

Marketplace Business Partner grants IBM a worldwide, royalty free, fully-paid up license to use Marketplace Business Partner's name and logo in the parties' web sites, external presentations and in advertising and/or marketing materials for the Cloud Marketplace. IBM will not display Marketplace Business Partner's name and logo in an inaccurate, derogatory, confusing or misleading manner. Except as expressly provided herein, IBM does not acquire any rights in Marketplace Business Partner's name or logo.

For so long as this Agreement remains in effect, Marketplace Business Partner may reference the fact that Marketplace Business Partner is a Marketplace Business Partner in press releases and promotional materials in support of the Cloud Product, and for general promotion purposes. IBM grants Marketplace Business Partner a non-exclusive, royalty-free license to use the IBM Cloud Marketplace logo, ("Marketplace Logo") as shown on the Cloud Marketplace web site at developer.ibm.com/marketplace/docs/vendor-guide/marketing-kit/, and in accordance with the usage rules on that site, which may be changed from time to time without notice. The Marketplace Logo may only be used by qualified Marketplace Business Partners as a linking device, linking from the Marketplace Business Partner's web site to the Cloud Marketplace at www.ibm.com/cloud-computing/marketplace.html. The Marketplace Logo may only be used as an illustration artwork in the body of the Marketplace Business Partner's website, near to text that communicates IBM's relationship with the Marketplace Business Partner. Upon termination of this Agreement, the Marketplace Business Partner must immediately cease use of the Marketplace Logo. Marketplace Business Partner will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. Marketplace Business Partner 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.

19. 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 Cloud Products, where the notice conforms to the then current requirements of the Digital Millennium Copyright Act (DMCA), IBM will immediately remove or block access to all copies of the Cloud Products. In the event IBM takes such action, Marketplace Business Partner 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 access to the Cloud Products. IBM's current policy regarding the DMCA and its requirements can be found at 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 Cloud 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 included in the Support Portal. Marketplace Business Partner contact information will be included in the Cloud 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) Marketplace Business Partner 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 Marketplace Business Partner. Any unauthorized assignment of this Agreement is void.
- h) Any terms of this Agreement, which by their nature extend beyond the date this Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees.
- i) Neither party will bring a legal action against the other more than two years after the cause of action arose.
- j) This Agreement is nonexclusive. Neither party is a legal representative nor legal agent of the other. Neither party is legally a partner of the other, and neither party is an employee or franchisee of the other, nor does the Agreement create a joint venture between the parties.
- k) Either party may independently develop, acquire, and market materials, products or services that may be competitive with (despite any similarity to) the other party's products or services. 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.
- l) Neither party will assume nor create any obligations on behalf of the other or any representations or warranties about the other, other than those authorized. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is either party responsible for any third party claims against the other party except as specifically provided herein.
- m) Neither party is responsible for failure to fulfill obligations due to causes beyond its control.

Appendix A: Country Required Terms

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

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 13. Each party is responsible for complying with all applicable laws relating to the use, storage and international transfer of information about its employees.