



IBM Business Partner Agreement for Software Remarketers of Authorised Programs

This IBM Business Partner Agreement (“Agreement”) governs IBM Product Distribution Limited’s (“IBM”) relationship with you as a Software Remarketer of Authorised Programs.

1. Definitions

Business Partner – a business entity that has an IBM Business Partner Agreement in effect with IBM to market Programs.

Customer – either an End User or a Remarketer.

Distributor - the distributor or Remarketer from whom you acquire the specified Programs.

End User – anyone, who is not part of the Enterprise of which you are a part, who acquires Programs for its own use and not for resale.

Enterprise – any legal entity and the subsidiaries it owns by more than 50%.

Operations Guide – the processes, procedures, and other pertinent information which IBM provides to you in one or more published forms or through our electronic information systems or a combination of both. In particular, information regarding your relationship requirements will be specified in the Participation Criteria section of the Operations Guide.

Participation Criteria – the minimum and mandatory requirements specified for the IBM Business Partner Software Remarketer of Authorised Programs relationship and applicable Reseller Authorisation groups that a Software Remarketer of Authorised Programs must meet and maintain.

Program – the following, including the original and all whole or partial copies:

- a. machine-readable instructions and data;
- b. components;
- c. audio-visual content (such as images, text, recordings, or pictures); and
- d. related licensed materials.

The term “Program” includes any IBM Program or non-IBM Program that IBM approves you to market or may provide to you.

Remarketer – a business entity which acquires Programs for the purpose of marketing.

Western Europe – the term “**Western Europe**” includes the following countries: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Estonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Vatican State.

2. Eligible Programs and Parties

Programs you are approved to market (“Eligible Programs”) and parties to whom you are approved to market are specified in the “Details of Our Relationship” section of this Agreement.

Any subsequent approvals or terms provided to you by IBM after the contract start date, as specified in the Details of Our Relationship section, will be specified in a “Details of Our Relationship—Modification.” Such subsequent approvals and terms will be effective on the date IBM specifies to you in writing and will remain in effect through the remainder of the duration of the contract period specified in the Details of Our Relationship section of this Agreement, including any subsequent renewal period, unless IBM notifies you otherwise in writing. If there is a conflict between the terms of the Details of Our Relationship section and



the Details of Our Relationship—Modification, the terms of the Details of Our Relationship—Modification will prevail.

You accept the terms of any subsequent approvals or Attachments provided in a Details of Our Relationship--Modification by doing any of the following after IBM has provided the Details of Our Relationship—Modification to you:

- a. signing it;
- b. marketing or ordering the Program;
- c. accepting or using the Program, or allowing others to do so;
- d. providing the Program to your Customer; or
- e. making any payment or requesting any fee for the Program.

Eligible Programs will be specified as part of a particular “Reseller Authorisation“ group in which the Program is included. IBM will specify each Reseller Authorisation group for which you are approved in the Details of Our Relationship section. IBM makes a listing of such Programs available to you on the IBM Internet website specified in the “Reseller Authorisation groups” section of the Operations Guide. You agree to monitor the Operations Guide and the website on a regular basis for changes.

You may also obtain a listing of the Programs from the designated distributor (called “Distributor”) who is approved by IBM to market these Programs and from whom you acquire Eligible Programs.

3. Additional Terms

Additional terms that apply to your Business Partner relationship are included in documents called “Attachments.” If there is a conflict between the terms in an Attachment and this Agreement, the terms of an Attachment prevail over the terms of this Agreement. IBM specifies in the Details of Our Relationship section Attachments that apply to your IBM Business Partner relationship as a Software Remarketer of Authorised Programs.

If there is a conflict between the terms of Attachments to this Agreement, the order of precedence will be stated in the applicable Attachment.

Any fees and compensation you may earn in connection with a Program you are approved to market under this Agreement will be subject to a separate agreement with IBM, as specified in the Operations Guide.

4. Our Relationship

Each of us agrees that:

- a. both of us are independent contractors, and this Agreement is non-exclusive. Neither of us is a legal representative or legal agent of the other. Neither of us is legally a partner of the other (for example, neither of us is responsible for debts incurred by the other), and neither of us is an employee or franchise of the other, nor does this Agreement create a joint venture between us;
- b. each of us is responsible for our own expenses regarding fulfillment of our responsibilities and obligations under the terms of this Agreement;
- c. neither of us will assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorised;
- d. neither of us will bring a legal action against the other more than two years after the cause of action arose, unless otherwise provided by applicable law without the possibility of contractual waiver;
- e. failure by either of us to insist on strict performance or to exercise a right when entitled does not prevent either of us from doing so at a later time, either in relation to that default or any subsequent one;



- f. neither of us is responsible for failure to fulfill non-monetary obligations due to causes beyond the reasonable control of either of us;
- g. in order to maintain flexibility in our relationship, IBM may change the terms of this Agreement by providing you at least one month's written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders.

You acknowledge your agreement to have these changes apply for transactions by placing new orders for or marketing Programs after the change effective date.

It may be necessary for IBM to change certain terms without providing the advance notice described above. The following changes are effective immediately upon written notice from IBM or on the date specified in the notice and, unless otherwise stated in the notice, apply to new and ongoing transactions under this Agreement.

- (1) those this Agreement states do not require advance notice,
- (2) the list of Eligible Programs for a particular Reseller Authorisation group unless otherwise limited by this Agreement, and
- (3) those relating to safety and security.

Changes to the Agreement terms may be communicated electronically in accordance with section 16 (Electronic Communications and Notices on IBM's Internet Website).

Except as otherwise provided above, for a change to the Agreement to be valid, both of us must agree in writing. Additional or different terms in any written communication from you are void;

- h. each of us will comply with all applicable laws and regulations such as those governing consumer transactions;
- i. IBM reserves the right to assign this Agreement, in whole or in part, on written notice; IBM reserves the right to have this Agreement or any part thereof, performed by another IBM organization or designee. The names of the local IBM organizations and designees are provided to you in writing
- j. if any provision of this Agreement is determined to be invalid or otherwise unenforceable, such provision will be deemed deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect as written; and
- k.

- (1) Definitions –

For the purposes of this item k, the following additional definitions shall apply:

Business Contact Information – business-related contact information which you have disclosed to IBM, including names, job titles, business addresses, telephone numbers and email addresses of your employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about you and your contractors as legal entities (for example, your revenue data and other transactional information).

Business Contact Personnel – Your employees and contractors to whom the Business Contact Information relates.

Data Protection Authority – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-European Union (EU) countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

Data Protection & Electronic Communications Legislation – (a) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (b) for non-EU countries, the legislation and/or regulations passed in the applicable country relating



to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.

- (2) (You agree) to authorise IBM:
 - (a) to process and use Business Contact Information within IBM Group for the purpose of furthering the business relationship between you and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the “Specified Purpose”); and
 - (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- (3) IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) To the extent required by the Data Protection & Electronic Communications Legislation, you represent that you have obtained (or will obtain) any consents from (and have issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- (5) You authorise IBM to transfer Business Contact Information outside the area of control of the applicable Data Protection Authority, for example outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

5. Your Responsibilities To IBM

You agree:

- a. to provide IBM, or our representative, with access to your facilities in order for IBM to fulfill our obligations and to review your compliance with the Agreement;
- b. your rights under this Agreement are not property rights and, therefore, you cannot transfer them to anyone else or encumber them in any way;
- c. for each Reseller Authorisation group you are approved to market, you will —
 - (1) maintain the criteria IBM specified to you when we approved you as an IBM Business Partner under this Agreement, and
 - (2) as IBM specifies in the “Participation Criteria” section of the Operations Guide,
 - (a) maintain the Participation Criteria (including without limitation, any applicable prerequisite requirements), and
 - (b) for each Reseller Authorisation group for which you are approved, you will maintain the capability to perform the activities that are required;
- d. to maintain trained personnel for the Programs you are approved to market;
- e. to maintain the capability to demonstrate the Programs, as IBM may specify in the Operations Guide;
- f. to maintain your membership as an IBM PartnerWorld participant, and as a participant in PartnerWorld offerings, such as SVI or VAP, as specified in the Operations Guide;



- g. to participate in the marketing activities as requested by IBM;
- h. to retain records of each Program transaction (for example, sale documents identifying your Customer and including Program specific information, a credit or a warranty claim) for three years and to provide us relevant records on request. We may reproduce and retain copies of these records;
- i. that you will not offer or make payments or gifts (monetary or otherwise) to anyone for the purpose of wrongfully influencing decisions in favour 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;
- j. that when we provide you with access to our information systems, it is only in support of your marketing activities. Programs we provide to you for your use with our information systems, which are in support of your marketing activities, are subject to the terms of their applicable license agreements, except you may not transfer them;
- k. to comply with the terms of the Code of Conduct set forth on the IBM Internet website at http://www.ibm.com/partnerworld/pwhome.nsf/weblook/pub_join_memctr_agreement_code.html;
- l. that IBM will provide to the Distributor you designate the information that you provided in the application you submitted to IBM, as notification to such Distributor that IBM has approved you as an IBM Business Partner Software Remarketer of Authorised Programs, and you authorise IBM to do so;
- m. that before you change Distributors, you will provide IBM written notice, as we specify in the Operations Guide. Any limitation on the number of times you may change Distributors will also be specified in the Operations Guide notwithstanding the possibility that you can source the Reseller Authorization groups Programs for which you are approved from any other similarly approved Remarketers;
- n. to provide us, or your Distributor, with marketing, sales, installation reporting, and inventory information for Programs, as we specify in the Operations Guide, or as we require your Distributor to provide to us;
- o. to assist IBM or your Distributor in tracing and locating Programs as IBM requires; and
- p. when marketing to other Remarketers, that you will market eligible Programs which we identify as being in selective distribution only to Remarketers who have been approved by, and have a contract with, IBM to market the same Reseller Authorisation group(s). You will require your Remarketers to comply with this same obligation. Eligible Programs which we identify as being in open distribution may also be marketed to Remarketers who do not have a contract with IBM for marketing these Programs.
- q. For the purpose of this item q, "Personal Data" means any information that may identify an individual, and, in some countries where it is legally required, legal entities. (You agree):
 - (1) not to use, disclose, or transfer across borders any Personal Data that we provide you, except to the extent necessary to perform under this Agreement;
 - (2) to comply with all applicable data privacy laws and regulations, implement and maintain appropriate technical and organisational measures and other protections for the Personal Data, (including, without limitation, not loading any Personal Data we provided to you on (a) any laptop computers or (b) any portable storage media that can be removed from your premises unless, in each case,(i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage);
 - (3) to report to us any breaches of security of Personal Data immediately after discovery thereof if the Personal Data was, or could be, accessed, used or acquired by an unauthorised person or compromised in any way; and



- (4) to cooperate fully i) with us in investigating any such breaches or compromises, ii) with our requests for access to, correction of, and destruction of Personal Data in your possession, and
- (5) to comply with all instructions or other requirements we provide from time to time relating to Personal Data.

6. Your Responsibilities To Customers

You agree to:

- a. identify and select the required technology based upon the End User's requirements;
- b. inform the Customer of Program installation requirements, and provide configuration support;
- c. comply with the terms regarding Program upgrades as we specify in the Operations Guide;
- d. assist your Customer in Program problem determination and resolution and advise your Customer of the availability of such support offerings;
- e. be responsible for customer satisfaction and to participate in customer satisfaction programs as we determine;
- f. subject to IBM's return policy for a Program, refund the Customer the amount it paid for the Program when it returns the Program to you. You may return such Programs to the Distributor from whom you acquired them, for credit;
- g. be the primary contact for Program information and support, and assist the Customer in determining when IBM needs to be contacted for technical support, if applicable. You may delegate these responsibilities to another IBM Business Partner who is approved to market such Programs. If you do, you retain customer satisfaction responsibilities;
- h. provide a dated written record, such as a sales receipt or an invoice, which specifies the End User's name; and
- i. inform your Customer that the sales receipt (or other documentation we may specify, such as the "Proof of Entitlement" specified in a license agreement if it is required) will be necessary for proof of warranty entitlement and for Program upgrades; and
- j. when you market a Program to Remarketers under this Agreement, in addition to the obligation under item 5 p. require them to comply with the terms of this section 6 when they market the Program to a Customer.

7. Status Change

You agree to give us prompt written notice (unless precluded by law or regulation) of any substantive change or anticipated change to the information supplied in your application. Upon notification of such change, (or in the event of failure to give notice of such change) IBM may, at its sole discretion, immediately terminate this Agreement.

8. Confidential Information

If either party desires to exchange confidential information, such exchange will be governed by the **IBM Agreement for Exchange of Confidential Information ("AECI")**. Each party accepts the terms of the AECI by signing the AECI or by accepting the IBM Business Partner Agreement or another document that incorporates the AECI by reference. If there is a conflict between the terms of this section and those of the AECI, the terms of this section 8 will prevail.

Generally, all information exchanged between IBM and you is considered nonconfidential. However, the following information is always considered confidential, regardless of whether it is marked with a restrictive legend or otherwise identified as confidential at the time of disclosure:

- a. information on IBM's Internet website that is contained in a restricted-access database to which IBM provides you access;



- b. IBM's sales leads and information regarding IBM's prospects or customers;
- c. unannounced information regarding products and services that IBM provides to you; and
- d. IBM's business and marketing plans and strategies.

You agree not to provide confidential information to IBM unless IBM specifically requests it.

9. Marketing Funds and Promotional Offerings

We may provide marketing funds and promotional offerings. If we do, you agree to use them according to our guidelines and to maintain records of your activities regarding the use of such funds and offerings for three years. We may withdraw or recover marketing funds and promotional offerings from you if you breach any terms of the Agreement. Upon notification of termination of the Agreement, marketing funds and promotional offerings will no longer be available for use by you, unless we specify otherwise in writing.

10. Fees and Compensation

Prior to your participation, and your submission of any request for fees or other compensation, under the terms of this Agreement you are required to (i) ensure that you are eligible to receive fees or other compensation subject to the terms of this Agreement in compliance with all applicable laws, including any anti-bribery and anti-kickback rules and regulations, and (ii) complete any legally required, or otherwise commercially appropriate disclosure in writing to the End User regarding such requested fee or other compensation.

10.1 Marketing to Public Sector End Users

If you are eligible for fees or compensation for marketing Programs under this Agreement to Public Sector End Users, either directly or indirectly, (for example, by involving a third party) you will not be eligible for such fees or other compensation if you hold a contract with the Public Sector End User to advise on the selection of programs and services. When you market to Public Sector End users for whom you do not hold a contract with the Public Sector End User to advise on the selection of programs or services, if required by law or by such End user's policies and procedures, you must notify the Public Sector End user in writing of your role in marketing IBM Programs and services including that you may receive a fee from IBM for such marketing activities and, upon request provide IBM with a copy of the written notice. In the event you violate any of the provisions of this paragraph, IBM is not liable to pay you fees or other compensation for the subject transaction, and if we have already paid you such fees or other compensation, you agree to repay it promptly on demand. A Public Sector End User shall be defined as the government of any (i) country, state, city, county, town, territory or other municipality (ii) any corporation, educational institution or other entity that is owned or controlled by, or subject to the procurement regulations of, any entity in subsection (i) immediately above and (iii) any prime contractor who holds a contract with any entity in subsections (i) and (ii), immediately above.

11. Export and Import

You may actively market Programs only within **Western Europe** and as permitted by their licensing terms. You may not market outside this scope, and you agree not to use anyone else to do so.

11.1 Export and Import Laws

You warrant that you will comply with all applicable export and import laws, including those of the United States (which in some instances prohibit or restrict in-country marketing to Customers), when you market Programs and technical data. You agree that if you export or import (for example, if you are approved for a geographic scope which includes multiple countries) Programs and technical data, you, and not IBM, will act as the exporter or importer. Further, you warrant that you are knowledgeable with, and are and will remain in full compliance with, the applicable export and import laws, regulations, orders and policies (including, but not limited to, securing all necessary clearance requirements, export and import licenses and exemptions, and making all proper filings). We may, at our sole discretion, require you from time to



time to provide us with written certification relating to your compliance with applicable export and import laws or prohibit you from doing business with certain Customers in order to ensure that you and IBM comply with applicable export and import laws.

You will indemnify us for claims made against us for your failure to comply with applicable export and import laws, regulations or orders.

11.2 Customer Exports

If a Customer acquires a Program for export, you agree to use your best efforts to ensure that it complies with all applicable export and import laws, including those of the United States.

For a Program acquired for export **outside Western Europe**, our responsibilities, if any, under this Agreement no longer apply to that Program, unless the Program's warranty or license terms state otherwise. Before your sale of such Program, you agree to prepare a support plan for it and obtain your Customer's agreement to that plan.

11.3 Attainment

Programs you export (or which are acquired by a Customer for export) will not count toward attainment of your objectives and will not qualify for applicable promotional offerings and marketing funds.

12. Programs

You agree to market Programs packaged together as a collection of individual Programs only as such collection and not separate any individual Program from the collection for purposes of marketing or transferring the Program.

13. Demonstration, Development and Evaluation Programs

Programs IBM makes available for demonstration, development, and evaluation purposes and instructions for acquiring such Programs are specified in the Operations Guide. Your acquisition and use of such Programs will be subject to a separate agreement with IBM and the additional Program license terms.

14. License Terms

IBM Programs are subject to this Agreement and additional Program license terms. In particular, IBM Programs are licensed under the terms of the applicable license agreement (for example, the IBM International Program License Agreement or IBM International License Agreement for Non-warranted Programs and their associated License Information documents) for each IBM Program. The license agreements referred to in this section are called "License Documents". We make current versions of the International Program License Agreement group of agreements available on the following IBM Internet website: <http://www-03.ibm.com/software/sla/sladb.nsf>.

IBM provides additional instructions regarding License Documents in the Operations Guide.

Non-IBM Programs you acquire under this Agreement are subject to the terms of any agreements provided by the non-IBM supplier or manufacturer of that Program.

14.1 Marketing to End Users

When you market directly to an End User, you agree to ensure the appropriate License Documents are provided to the End User in a format sufficient to create an enforceable agreement under applicable country law (for example, certain countries require contracting in hard copy format) before the sale to the End User is finalised.

14.2 Marketing to Remarketers

If either by law or under the terms of this Agreement you may market to Remarketers and you market an eligible Program to a Remarketer who does not have a contract with IBM for marketing that Program, you agree to i) ensure the appropriate License Documents are provided to your Remarketer, and ii) require the Remarketer to provide them to the End User in a format sufficient to create an enforceable agreement



under applicable country law (for example, certain countries require contracting in hard copy format) before the sale is finalised.

14.3 Programs Installed on Behalf of End Users

If you are installing IBM Programs for the End User, you further agree to i) secure legally enforceable documentation confirming that the End User has accepted the License Documents and has authorised you to take actions necessary to accept the License Documents on the End User's behalf ii) retain such documentation for a minimum of three years, and iii) provide such documentation to IBM upon request for IBM to verify compliance with this section.

If you market IBM Programs to Remarketers who install IBM Programs for the End User, for those Remarketers who do not have a contract with IBM, you further agree to require your Remarketer to fulfill the obligations in the preceding paragraph in its agreements with End Users.

14.4 Subsequent Remarketers

If your Remarketer markets an eligible Program to other Remarketers who do not have a contract with IBM for marketing that Program, you further agree to require your Remarketer to provide the License Documents to its subsequent Remarketers in accordance with this section and to require such subsequent Remarketers to comply with the terms in this section in their agreements with End Users and any other Remarketers.

14.5 Your Additional Responsibilities

You agree to provide assistance your Remarketers may require from you regarding their responsibilities under this section.

To the extent you fail to fulfill your obligations under this Agreement to i) provide any License Documents to an End User or Remarketer or ii) require your Remarketers to fulfill their similar obligations, you agree to reimburse IBM for reasonable costs and other amounts IBM may incur as a result of such failure, including costs and other amounts incurred pursuing remedies against an End User relating to the End User's failure to comply with the applicable License Documents.

15. Trademarks

We will notify you in writing of the applicable Business Partner title and emblem which you are authorised to use. We will provide you with written guidelines which we may periodically modify regarding the use of the Business Partner title and emblem. You may not modify the emblem in any way. You may use our Trademarks (which include the title, emblem, IBM Trademarks and service marks) (called "Trademarks") only as provided below:

- a. within Western Europe;
- b. in association with Programs we approve you to market; and
- c. as described in the written guidelines provided to you.

The royalty normally associated with non-exclusive use of the Trademarks will be waived, since the use of this asset is in conjunction with marketing activities supporting sales of Programs.

You agree to promptly modify, at your expense, any advertising or promotional materials that do not comply with our guidelines. If you receive any complaints about your use of a Trademark, you agree to promptly notify us. When this Agreement ends, you agree to promptly stop using our Trademarks. If you do not, you agree to pay any expenses and fees we incur in getting you to stop.

You agree not to register or use any mark that is confusingly similar to any of our Trademarks. Our Trademarks, and any goodwill resulting from your use of them, belong to us.

16. Liability

Circumstances may arise where, because of a default or other liability, one of us is entitled to recover damages from the other. The following terms apply as your exclusive remedy and our exclusive liability.



16.1 Our Liability

IBM's entire liability for all claims in the aggregate arising from our negligence or breach of this Agreement, will not exceed the amount of any direct damages up to the greater of Euro 500,000 or 125% of the charges for the Program that is the subject of the claim.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

16.2 Items for Which We Are Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- f. loss of, or damage to, data;
- g. special, incidental, exemplary, or indirect damages, or for any economic consequential damages; or
- h. lost profits, business, revenue, goodwill or anticipated savings.

No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against you except as permitted by this Liability section for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.

16.3 Your Liability

In addition to damages for which you are liable under applicable law or the terms of this Agreement, you will indemnify us for claims made against us by others arising out of your conduct under this Agreement or as a result of your relationship with any third party, including without limitation any claim based on representations, statements, claims or warranties not authorised by IBM.

17. Electronic Communications and Notices on IBM's Internet Website

17.1 Electronic Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in this Agreement or an applicable Attachment to this Agreement. The parties consent to the use of electronic means and facsimile transmissions to send and receive communication in connection with our business relationship arising out of this Agreement, and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

17.2 Notices on IBM's Internet Website

IBM provides some Attachments and Details of Our Relationship--Modifications, information regarding changes to Agreement terms, and other important information regarding your relationship with IBM under this Agreement on IBM's Internet website at <http://www.ibm.com/partnerworld>. By accepting this Agreement, including any Attachment or Details of Our Relationship—Modification under this Agreement, you represent that you have reviewed the applicable terms on the IBM Internet website and you accept those terms. And you agree to monitor the website on a regular basis for changes.

18. Ending the Agreement

Regardless of the contract duration specified under "Details of Our Relationship", or any renewal period in effect, either of us may terminate this Agreement, with or without cause, on three months' written notice.



IBM Ireland Product Distribution Limited
Oldbrook House
24-32 Pembroke Road
Ballsbridge
Dublin 4, Ireland

Head office in the Netherlands

If, under applicable law, a longer period is mandatory, then the notice period is the minimum notice period allowable.

If we terminate for cause we may, at our discretion, allow you a reasonable opportunity to cure. If you fail to do so, the date of termination is that specified in the notice.

However, if either party breaches a material term of the Agreement, the other party may terminate the Agreement on written notice. Examples of such breach by you are: if you do not maintain customer satisfaction, if you repudiate this Agreement, if you make any material misrepresentation to us, if you request fees or other compensation for the marketing of Programs and services to Public Sector End Users while holding a contract with the Public Sector End User to advise on the selection of programs and services or if you submit a project form for a fee payment under this Agreement requesting approval to market IBM Programs to Public Sector End Users while holding a contract with the Public Sector End User to advise on the selection of programs and services or if you do not fulfill your responsibilities regarding licensing agreements.

You agree that if we permit you to perform certain activities after this Agreement ends, you will do so under the terms of this Agreement.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

19. Governing Law

The laws of Ireland will govern, construe and enforce the rights, duties and obligations arising under, or relating in any manner to, the subject matter of this Agreement, notwithstanding any conflicts of laws principles.

This Agreement or any action or claim arising thereunder is governed by Irish law and both parties agree to submit to the exclusive jurisdiction of the Irish Courts.

The "United Nations Convention on Contracts for the International Sale of Goods" does not apply.



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Head office in the Netherlands

DETAILS OF OUR RELATIONSHIP

Contract Start Date and Duration

Start Date _____ Duration _____

Unless we specify otherwise in writing, the Agreement will be renewed automatically for subsequent two year periods. However, you may advise us in writing not to renew the Agreement. Each of us is responsible to provide the other three months' written notice if the Agreement will not be renewed.

Electronic Acceptance

If an electronic contracting method is used to accept the terms of this Agreement, the contract start date, duration, and the details of the approvals for this Details of Our Relationship section and any subsequent Details of Our Relationship—Modification will be provided to you in IBM's electronic approval confirmation, which will be provided to the primary relationship contact that is specified in your profile on the IBM PartnerWorld Internet website.

Reseller Authorisation groups that You are Approved to Market

Parties to Whom You Are Approved to Market

End Users: YES

Remarketers (Yes) (1) _____

(1) All the above Reseller Authorisation groups are in selective distribution. In addition to the above groups you may also market - subject to the terms and conditions of this Agreement - all Programs that you find in the IBM Distributed Software Price Book whose Reseller Authorisation terms are identified as 'No authorisation required': such Programs are in open distribution.

Applicable Attachments

This Agreement, including its applicable Attachments, is the complete agreement between you and IBM regarding your relationship with IBM as an IBM Business Partner Software Remarketer of Authorised Programs under which you market and obtain certain Programs licenses and replaces any prior oral or written communications between



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you and IBM. In entering into this Agreement, including each Attachment, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) performance or function of any Program or system, other than as expressly warranted by IBM; ii) the experiences or recommendations of other parties; or iii) results or sales you may achieve. Additional or different terms in any written communication from you are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates this Agreement by reference) by hand or, where recognised by law, electronically. Once signed, i) any reproduction of this Agreement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Programs marketed under this Agreement are subject to it.

Agreed to:

{Business Partner Legal Name}

By: _____

Authorised Signature

Title:

Name (type or print):

Date:

IBM Business Partner Address:

Agreed to:

IBM Product Distribution Limited (“IBM”)

By: _____

Authorised Signature

Title:

Name (type or print):

Date:

IBM Address:

Oldbrook House, 24-32 Pembroke Road,
Ballsbridge, Dublin 4, Ireland

Reference Agreement Number (Agreement ID):