

IBM Bluemix Business Provider Agreement

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

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

1. Agreement Structure

The complete agreement governing the Bluemix Business Provider's Product in IBM Bluemix consists of this Agreement including applicable country required terms in Appendix A, the Bluemix Business Provider Agreement Supplement ("Bluemix Supplement") if applicable, any applicable Attachments, and the Bluemix Business Provider Policies. If there is a conflict of terms, the Bluemix Supplement (if applicable) shall prevail over this Agreement and this Agreement shall prevail over the Bluemix Business Provider Policies. This Agreement governs all Products offered by the Bluemix Business Provider in IBM Bluemix. This Agreement and applicable Attachments supersede any prior discussions or representations regarding the Bluemix Business Provider's participation in IBM Bluemix.

2. Definitions

Bluemix Business Provider - the party to this Agreement who has accepted the terms of this Bluemix Business Provider Agreement and makes its Product available in IBM Bluemix. A Bluemix Business Provider may also be an IBM Business Provider with separate legal agreements in place for that relationship. For this agreement Bluemix Business Provider is referring to a party without regard to other relationships with IBM.

Bluemix Business Provider Fees - the fees payable by IBM to the Bluemix Business Provider as defined in this Agreement or the Bluemix Supplement.

Bluemix Business Provider Guide - technical information provided on the Bluemix Business Provider Portal that provides detailed information for integrating Bluemix Business Provider Products into IBM Bluemix.

Bluemix Business Provider Material - trademarks and other promotional material, documentation, and other information that the Bluemix Business Provider uploads and submits to its account on the Bluemix Business Provider Portal.

Bluemix Business Provider Policies - the IBM policies and procedures for Bluemix Business Providers and Products set forth at <https://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=WUL12386USE&> which IBM may change at any time in its sole discretion.

Bluemix Business Provider Portal - the password-protected Internet portal that is part of IBM Bluemix that enables Bluemix Business Providers to create and manage Product listings including pricing and distribution options.

Commerce Platform Integration - the necessary technical integration to support the commercial transaction of the Product to allow a User to access and/or purchase the Product through IBM Bluemix. A Product which undergoes this technical commercial integration and is approved by IBM Bluemix for inclusion in the IBM Bluemix catalog shall be referred to as an **Integrated Commerce Product**.

IBM Bluemix - the IBM IaaS and PaaS offerings made available to customers and that includes a catalog of IBM and non-IBM services available for use or purchase by those customers. IBM Bluemix is currently available at <https://console.ng.bluemix.net>.

Product - a service, product or other asset, made or to be made available by the Bluemix Business Provider to Users through IBM Bluemix or directly from the Bluemix Business Provider through the IBM Bluemix Referral Program.

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

Referral Program - the IBM Bluemix program, in which the Bluemix Business Provider may participate on a Product by Product basis if those Products are approved by IBM Bluemix for inclusion in the IBM Bluemix catalog, whereby instead of a User accessing and/or purchasing the Product through IBM Bluemix, the Product listing directs the User to the Bluemix Business Provider's website for Product and purchase transactions.

Support Portal - the section of IBM Bluemix that contains information on obtaining technical or user support from IBM for IBM Bluemix, 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 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 the Bluemix Business Provider for Products provided by the Bluemix Business Provider to Users under or pursuant to this Agreement; exclusive, however, of any taxes imposed upon the net income or capital of the Bluemix Business Provider and any taxes in lieu of such net income taxes and any other taxes which are to be borne by the Bluemix Business Provider under law.

User - a user of IBM Bluemix that accesses the Products.

3. Product Requirements

3.1 Product Listing Implementation and Publication

The Bluemix Business Provider will use the Bluemix Business Provider Portal to create, maintain, and appropriately categorize its Product listing in IBM Bluemix, as set forth in the Bluemix Business Provider Policies. Each Product must be approved by IBM Bluemix for inclusion in the IBM Bluemix catalog and either (i) an Integrated Commerce Product, including support for single sign-on or (ii) part of the IBM Bluemix Referral Program. Product requirements and categories, technical integration (including Commerce Platform Integration) requirements, and Referral Program details are set forth in the Bluemix Business Provider Policies.

3.2 Editions

For each Integrated Commerce Product, the Bluemix Business Provider will offer at least one priced edition of such Product (and such priced edition may include a thirty (30) day free trial period), and additionally, the Bluemix Business Provider may offer a separate free edition. The Bluemix Business Provider will offer at least the most current version of the priced edition that is offered by the Bluemix Business Provider on similar marketplaces or channels. The Bluemix Business Provider may limit access to or capabilities of the free edition or the free trial period in the Bluemix Business Provider's sole discretion.

For Integrated Commerce Products and Referral Program Products, the Bluemix Business Provider will make the Product available to Users, with substantially the same capabilities, for a minimum of one year. The Bluemix Business Provider may remove the Product from IBM Bluemix upon the one year anniversary of its listing, provided the Bluemix Business Provider gives all subscribing Users ninety (90) days written notice prior to any removal that such Product will be removed from IBM Bluemix.

3.3 Support

The Bluemix Business Provider is solely responsible for all errors or issues associated with its Product and for providing all technical and user support for its Product for as long as the Product is offered on IBM Bluemix. The Bluemix Business Provider must provide at least the minimum support methods set forth in the Bluemix Business Provider Policies.

IBM will provide support to the Bluemix Business Provider and Users for IBM Bluemix. IBM will provide contact information for support for IBM Bluemix on the Support Portal.

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

3.4 Terms

Except for billing and payment provisions for an Integrated Commerce Product, the Bluemix Business Provider will provide all terms of use or end user license agreements and all use of the Products will be subject to the Bluemix Business Provider'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 Products will be directly between the applicable User and the Bluemix Business Provider. IBM is not a party to such license or terms of use; however, IBM reserves the right in its sole discretion to reject the Bluemix Business Provider's terms of use or end user license agreement and suspend or remove the Product. At a minimum, the terms of use or end user license agreements will:

- a) grant Users the right to use the Bluemix Business Provider's Product as part of the User's developed solution or application ("User Solution") made available to User's end users, provided that the User may not redistribute or resell direct access to any Product without express written consent from the Bluemix Business Provider;
- b) set forth the Bluemix Business Provider's security policies;

- c) not impose any requirements or liability upon IBM; and
- d) no override any IBM terms under this Agreement or the terms under which the User has access to IBM Bluemix.

4. Responsibilities

4.1 Bluemix Business Provider Responsibilities

The Bluemix Business 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 the Bluemix Business Provider;
- b) provide timely technical and user support to identify and correct any known or reported errors in its Product;
- c) be responsible for development, implementation, full testing, and management of the Product and all costs associated therewith;
- d) be responsible for creating and maintaining Bluemix Business Provider Material regarding the Bluemix Business Provider's Product;
- e) provide any applicable terms of use or end user license agreements related to the use of its Products, including billing and payment terms for those Referral Program Products, and maintain such terms of use, license agreements and billing and payment terms and access thereto;
- f) provide a privacy policy(ies) related to its website and the use of its Products by Users;
- g) 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;
- h) comply with the Bluemix Business Provider Policies set forth at <https://www-01.ibm.com/common/ssi/cgi-bin/ssialias?htmlfid=WUL12386USEN&> and the Acceptable Internet Use Policy for IBM Services set forth at <http://www.ibm.com/services/aup.html>. The Bluemix Business Provider is responsible for checking the Bluemix Business Provider Policies and the Acceptable Internet Use Policy periodically for changes and the Bluemix Business Provider's continued participation in IBM Bluemix constitutes the Bluemix Business Provider's acceptance of and agreement to any such changes;
- i) not include any confidential information in IBM Bluemix or its Product listing;
- j) not perform any technical security test, penetration test, or vulnerability scan of IBM Bluemix;
- k) during the term and for two years thereafter, maintain internal and external records, including written contracts with its customers for the Products, and upon IBM's reasonable written request, provide IBM with adequate documentation to confirm the Bluemix Business Provider's compliance with this Agreement; and
- l) obtain all necessary permissions to use, provide, store and process content in IBM Bluemix and grants IBM permission to do the same.

4.2 IBM Responsibilities

IBM will:

- a) provide reasonable technical assistance as required for registering the Bluemix Business Provider's Product in IBM Bluemix and, if applicable, integrating the Product with IBM Bluemix APIs;
- b) review and publish the Product listing to IBM Bluemix if approved by IBM, as described in Section 3 (Implementation) above;
- c) provide Users with access to the Bluemix Business Provider's terms of use or end user license agreement for Integrated Commerce Products at the time of purchase;
- d) provide notice to the Bluemix Business Provider if the terms and conditions of this Agreement change; however, IBM shall provide the Bluemix Business Provider with ninety (90) days' notice if the terms and conditions change in Articles 14 Representations and Warranties, 15 Indemnification, or 16 Limitation of Liability. If the Bluemix Business Provider does not agree to any such changes, the Bluemix Business Provider may terminate this Agreement pursuant to Section 11.2;
- e) provide physical access security for IBM Bluemix; and
- f) provide User access and authorization controls for IBM Bluemix.
- g) IBM will provide physical access security for the cloud data center IBM uses to provide IBM Bluemix where we store your account and order information for Products purchased through

IBM Bluemix using generally accepted industry security practices and standards. IBM will provide access and authorization controls for userid(s) and account.

5. License Grants

5.1 License Grant to IBM

Subject to the terms and conditions of this Agreement, the Bluemix Business Provider grants IBM and its subsidiaries a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license to 1) register its Product in IBM Bluemix, 2) make such Product available to Users, 3) use Bluemix Business Provider Material anywhere within IBM Bluemix, 4) test the Product availability and integration with IBM Bluemix, 5) test for known or reported errors, and 6) demonstrate the Product for marketing purposes.

The Bluemix Business Provider acknowledges that IBM may rebrand IBM Bluemix or create additional versions of IBM Bluemix. The same rights are granted for any such rebranded or additional versions of IBM Bluemix. IBM acknowledges that the Product is solely the property of the Bluemix Business Provider and its licensors, and nothing in this Agreement confers upon IBM any intellectual property rights in the Bluemix Business Provider Product except as explicitly set forth herein.

5.2 License Grant to Bluemix Business Provider

During the term of this Agreement, IBM grants the Bluemix Business Provider a worldwide, non-exclusive, paid-up right and license to integrate the Bluemix Business Provider's Products into IBM Bluemix in accordance with the Bluemix Business Provider Guide.

Except as set forth in this Section 5.2 (License Grant to the Bluemix Business Provider), IBM or its supplier retains exclusive right, title and interest in and to (a) IBM Bluemix, (b) all visual interfaces, text, graphics and other content included on IBM Bluemix; (c) all underlying technology, software, data, and other materials that implement and/or operate IBM Bluemix; (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

6.1 Fees for Integrated Commerce Products

For Integrated Commerce Products, the Bluemix Business Provider will determine the Product Fees using the available payment plan options available in the Bluemix Business Provider Portal. IBM will be responsible for charging Users the Product Fees and collecting payment from the Users, including all applicable Taxes.

Upon IBM's receipt of payment by User, IBM will pay the Bluemix Business Provider the Bluemix Business Provider Fees, which is comprised of the Product Fees less an amount equal to a certain percentage of the Product Fees, as described in the Bluemix Business Provider Policies. IBM may change the percentage of Bluemix Business Provider Fees and other financial terms with ninety (90) days notice to the Bluemix Business Provider. Continued provision of the Product through IBM Bluemix means the Bluemix Business Provider accepts the change.

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

6.2 Fees for Referral Program Products

For those Products which are not Integrated Commerce Products and which are part of the IBM Bluemix Referral Program, the Bluemix Business 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, the Bluemix Business 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 the Bluemix Business Provider, IBM may implement a referral fee which shall apply to Referral Program Products. Continued offering of the Product through IBM Bluemix means the Bluemix Business Provider accepts the change.

As set forth in the Bluemix Business Provider Policies, the Bluemix Business Provider may be required to track and provide IBM with certain Product data.

7. Refunds and Credits for Integrated Commerce Products

For those Integrated Commerce Products, IBM will be the contact for refunds, credits and billing disputes from Users. IBM will publish refund, credit, and billing dispute policies and procedures for Users on the IBM Bluemix site and will publish refund, credit, and billing dispute policies and procedures for Bluemix Business Providers in the Bluemix Business Provider Policies.

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

8. Disputes and Complaints

The Bluemix Business 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. IBM will publish the User complaint policies and procedures on the IBM Bluemix site.

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 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 Bluemix Business Provider. In such cases, IBM may withhold the amount of Taxes due from payments to be made to the Bluemix Business Provider 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 Bluemix Business Provider with documentation evidencing the withholding amount. For fulfillment of Integrated Commerce Products, the Bluemix Business Provider agrees no tangible personal property (including media and publications) will be delivered to Users. Each party agrees to cooperate to minimize any applicable Taxes including reasonable notice and cooperation in connection with any audit.

10. Compliance

10.1 Export Laws

The Bluemix Business 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). The Bluemix Business 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.

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

10.2 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.

10.3 Prohibition on Gifts

The Bluemix Business 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.

11. Term and Termination

11.1 Term

This Agreement is effective upon acceptance by the Bluemix Business Provider, and will remain in effect as long as the Bluemix Business Provider offers one or more Products on IBM Bluemix, unless terminated earlier as described below.

11.2 Termination

- a) IBM may terminate this Agreement for any reason or no reason on ninety (90) days written notice to the Bluemix Business Provider. Upon receiving such notice, the Bluemix Business Provider will provide written notice to all subscribing Users of the withdrawal of any applicable 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 the Bluemix Business Provider), the Bluemix Business Provider will provide written notice to all subscribing Users of the withdrawal of any applicable Products resulting from such termination.
- c) The Bluemix Business Provider may terminate this Agreement for any reason or no reason on ninety (90) days written notice to IBM after offering the Product on IBM Bluemix for twelve (12) months as set forth in Section 3.2 (Editions).
- d) Notwithstanding the terms of Section 3.2 (Editions), the Bluemix Business Provider may terminate this Agreement and remove the Product from IBM Bluemix if the Bluemix Business Provider provides IBM and all subscribing Users with ninety (90) days written notice and:
 - i. IBM fails to pay the Bluemix Business Provider as set forth in Section 6 (Fees) or in the Bluemix Supplement and such failure to pay is not cured within ninety (90) days; or
 - ii. The Bluemix Business Provider withdraws the Product from any and all public offerings, or
 - iii. IBM materially changes the terms of the Bluemix Business Provider Agreement and the Bluemix Business Provider does not agree to such changes. The parties agree that during the ninety (90) day written notice period, the unmodified terms of this Agreement shall apply, and not any new or updated terms.

12. Suspension and Removal

- a) IBM may suspend the Product from IBM Bluemix at any time due to the Bluemix Business 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, the Bluemix Business 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 if such breach, misappropriation or violation is resolved to IBM's satisfaction; or (ii) remove the Product from IBM Bluemix, provided that if such Product is removed by IBM, IBM shall provide the Bluemix Business Provider with written notice and explanation of its removal.
- b) The Bluemix Business Provider may suspend or remove the Bluemix Business Provider's Product from IBM Bluemix upon ninety (90) days prior written notice to IBM after offering the Product on IBM Bluemix as set forth in Section 3.2 (Editions), provided the Bluemix Business Provider gives all subscribing 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

The Bluemix Business Provider represents and warrants that:

- a) the Bluemix Business 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 Bluemix Business 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 the Bluemix Business Provider to IBM or Users is true and accurate;
- d) neither the Product nor the Bluemix Business Provider Material infringes any patent, copyright, trademark or trade secret or any other intellectual property rights of any third party;
- e) the Product does not contain any virus, malware, or other harmful code; and

f) the Bluemix Business 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 PARTICULAR PURPOSE. NEITHER IBM NOR ITS SUPPLIERS MAKE ANY WARRANTIES THAT ANY PARTICULAR RESULTS WILL BE DERIVED FROM THE USE OF IBM BLUEMIX OR ANY DELIVERABLES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

15. Indemnification

15.1 Bluemix Business Provider Indemnification

The Bluemix Business Provider will defend, indemnify and hold IBM and its IBM Bluemix technology suppliers harmless with respect to any third party claims alleging a breach of the representations and warranties set forth in Section 14 (Representations and Warranties), provided IBM promptly (i) notifies the Bluemix Business Provider in writing of the claim, (ii) supplies information reasonably requested by the Bluemix Business Provider, and (iii) allows the Bluemix Business Provider to control and reasonably cooperates in the defense and settlement, including mitigation efforts at the Bluemix Business Provider's expense; however, IBM and its IBM Bluemix technology suppliers may participate in the proceedings at their option and expense.

15.2 IBM Indemnification

If a third party asserts a claim against the Bluemix Business Provider that IBM Bluemix infringes a patent or copyright, IBM will defend the Bluemix Business Provider against that claim and pay amounts finally awarded by a court against the Bluemix Business Provider or included in a settlement approved by IBM, provided that the Bluemix Business Provider promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. IBM has no responsibility for claims based, in whole or part, on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by the Bluemix Business Provider's content, materials, designs, or specifications.

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 IBM Bluemix, a 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, its subsidiaries, and its contractors. Neither party, nor their subsidiaries or contractors, 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.

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

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

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

18. Marketing Rights

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

Bluemix Business Provider's name and logo in an inaccurate, derogatory, confusing or misleading manner, and the Bluemix Business 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 the Bluemix Business Provider's name or logo.

For so long as this Agreement remains in effect, the Bluemix Business Provider may reference the fact that the Bluemix Business Provider is a Bluemix Business Provider in press releases and promotional materials in support of the Product, and for general promotion purposes. The Bluemix Business Provider is eligible to obtain a license to use the IBM Bluemix Logo associated with the marketing of its Product through the Bluemix Trademark site located at <https://www.ibm.com/cloud-computing/bluemix/trademark-request>. Upon termination of this Agreement, the Bluemix Business Provider must immediately cease use of the IBM Bluemix Logo. The Bluemix Business Provider will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. The Bluemix Business 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.

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 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 IBM Bluemix. In the event IBM takes such action, the Bluemix Business 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 IBM Bluemix. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Bluemix Business 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 included in the Support Portal. The Bluemix Business Provider contact information will be included in the Product listing.
- e) If any term of this Agreement is found to be unenforceable in any respect, the validity of the remainder of the Agreement will be unaffected.
- f) A waiver of any right under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation under this Agreement will not be deemed a waiver of subsequent instances.
- g) The Bluemix Business 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 subsidiary without the prior written consent of the Bluemix Business 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 Bluemix Business Provider's business address, the following terms replace or modify the referenced base terms of the IBM Bluemix Business Provider Agreement. All terms not changed by these amendments remain unchanged and in effect.

AUSTRALIA

10.2 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"

17 Business Contact Information

The following replaces this clause:

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

19 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 IBM Bluemix. In the event IBM takes such action, the Bluemix Business Provider may provide a counter notice to IBM and IBM will, in its sole discretion, restore the Products to IBM Bluemix. If IBM receives a notice of copyright infringement concerning the material a User stores in the Product, IBM will refer the notice to the Bluemix Business 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 13. Each party is responsible for complying with all applicable laws relating to the use, storage and international transfer of information about its employees.