International Agreement for Exchange of Confidential Information

The parties’ mutual objective under this International Agreement for Exchange of Confidential Information (Agreement) is to provide protection for confidential information (Information) while maintaining each party’s ability to conduct its respective business activities. Each party agrees that the following terms apply when one party (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:
   a. in writing;
   b. by delivery of items;
   c. by initiation of access to Information, such as may be in a data base; or
   d. by oral or visual presentation.

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

2. Obligations

The Recipient agrees to:
   a. use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
   b. use the Discloser’s Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:
   a. its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
   b. any other party with the Discloser’s prior written consent.

Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:
   a. already in its possession without obligation of confidentiality;
   b. developed independently;
   c. obtained from a source other than the Discloser without obligation of confidentiality;
d. publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or

e. disclosed by the Discloser to another without obligation of confidentiality.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser’s Information which are retained in the memories of Recipient’s employees who have had access to the Information under this Agreement.

5. **Disclaimers**

**THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.**

Any Information regarding the Discloser’s future products or services is subject to change or withdrawal without notice. The development, release, and timing of any future features or functionality described for Discloser’s products and services remains at Discloser’s sole discretion.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. **Import/Export**

The Recipient will:

a. comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users, and

b. unless authorized by applicable governmental license or regulation, not directly or indirectly export or re-export any technical information or software subject to this Agreement (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations.

This section will survive the termination or expiration of this Agreement and the confidentiality period above and will remain in effect until fulfilled.

7. **Termination**

Either party may terminate this Agreement by providing one month’s written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

**ASIA PACIFIC**

*In Indonesia the following is added to the end of section 7:*

Both parties waive in this regard the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

8. **General**

a. This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement.

b. Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

c. The exchange of Information under this Agreement does not create any joint relationship, or authorize either party to act or speak on behalf of the other.
d. The receipt of Information under this Agreement will not in any way limit the Recipient from:

   (1) developing, manufacturing, marketing or providing to others products or services which may be competitive with products or services of the Discloser;
   
   (2) developing, manufacturing, marketing or providing products or services to others who compete with the Discloser;
   
   (3) assigning its employees in any way it may choose; or
   
   (4) entering into any business relationship with any other party

e. Any feedback (including suggestions, data and/or written materials) provided by a Recipient of Information regarding the Discloser’s products or services (or future plans about them) shall not be subject to any obligation of confidentiality under this Agreement, provided that there shall be no right to identify a party as the source of any such feedback.

f. Only a written agreement signed by both parties can modify this Agreement.

CANADA

In Canada, Province of Quebec for all contracts drafted in English, the following is added as section 8 (g):

Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

9. Geographic Scope

The rights, duties, and obligations of each party are valid only in the country in which the disclosure is made.

EUROPE, MIDDLE EAST, AND AFRICA

In South Africa, Namibia, Lesotho, and Swaziland, the following paragraph pertains to geographic scope and replaces the first paragraph in section 9:

The rights, duties, and obligations of each party are valid only in South Africa, Namibia, Lesotho and Swaziland, unless otherwise stated in a supplement to this Agreement.

10. Governing Law

Both parties agree to the application of the laws of the country in which the disclosure occurs to govern, interpret, and enforce all of the parties’ respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

In the countries specified below, the following terms replace the phrase “the laws of the country in which the disclosure occurs”:

AMERICAS

a. in Canada: the laws in the Province of Ontario;

b. in Mexico: the federal laws of the Republic of Mexico;

c. in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;

d. in Venezuela: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

e. in Cambodia and Laos: the laws of the State of New York, United States;

f. in Australia: the laws of the State or Territory in which the transaction is performed;
g. in **Hong Kong SAR and Macau SAR**: the laws of Hong Kong Special Administrative Region (SAR);

h. in **Taiwan**: the laws of Taiwan;

**EUROPE, MIDDLE EAST, AND AFRICA**

i. in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of Austria;

j. in **Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;

k. in **Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Libya, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia and Zimbabwe**: the laws of England;

l. in **Estonia, Latvia, and Lithuania**: the laws of Finland; and

m. in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the Republic of South Africa.

11. **Jurisdiction**

   *The following paragraph is added to section 11 as it applies for the countries identified in bold print below:*

   All rights, duties, and obligations under this Agreement are subject to the courts of the country in which the transaction is performed except that in the countries identified below, all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

**AMERICAS**

a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,

b. in **Brazil**: the court of Rio de Janeiro, RJ;

c. in **Chile**: the Civil Courts of Justice of Santiago;

d. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);

e. in **Mexico**: the courts located in Mexico City, Federal District;

f. in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;

g. in **Uruguay**: the courts of the city of Montevideo;

h. in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

**ASIA PACIFIC**

i. in **Hong Kong SAR**: the courts of Hong Kong SAR;

j. in **Macau SAR**: the courts of Macau SAR, except under Governing Law, above;

k. in **Taiwan**: the courts of Taiwan.

**EUROPE, MIDDLE EAST, AND AFRICA**
l. in **Andorra**: the Commercial Court of Paris;
m. in **Austria**: the court of law in Vienna, Austria (Inner-City);

n. in **Greece**: the competent court of Athens;
o. in **Israel**: the courts of Tel Aviv-Jaffa;
p. in **Italy**: the courts of Milan;
q. in **Portugal**: the courts of Lisbon;
r. in **Spain**: the courts of Madrid;
s. in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey; and
t. in the **United Kingdom**: the English courts.

### 12. Arbitration

The following terms are added to section 12 as they apply for the countries identified in bold print below. The provisions of these paragraphs apply to the extent permitted by applicable governing law and rules of procedure:

**ASIA PACIFIC**

a. In **Cambodia, India, Laos, the Philippines and Vietnam** disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

b. In **Indonesia** disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.
c. In Malaysia, disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Kuala Lumpur in accordance with the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The arbitral tribunal shall consist of one arbitrator to be agreed upon between the parties. Either party may propose to the other the name or names of one or more persons, one of whom would serve as the sole arbitrator. If no agreement is reached within thirty (30) days after receipt by one party of such a proposal from the other, the arbitrator shall be appointed by the Director of the KLRCA.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language.

d. In the People's Republic of China any disputes arising from or in connection with this Agreement will first be resolved through friendly consultation, failing which either of us has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration in accordance with its arbitration rules in force at the time. The arbitration tribunal will consist of three arbitrators. The language to be used therein will be English and Chinese. An arbitral award will be final and binding on all the parties, and will be enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). The arbitration fee will be borne by the losing party unless otherwise determined by the arbitral award. During the course of arbitration, this Agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

EUROPE, MIDDLE EAST, AND AFRICA

e. In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan the substantive laws of Austria will govern, construe and enforce all 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. The "United Nations Convention on Contracts for the International Sale of Goods" does not apply. All disputes arising out of this Agreement or related to its violation, termination or nullity shall be finally settled under Rules of Arbitration and Conciliation of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration shall be held in Vienna, Austria and the official language of the proceedings shall be in English. The decision of the arbitrators shall be final and binding upon both parties. The clause set forth above shall, however, in no way limit IBM's right to institute proceedings in any competent court.

f. In Algeria, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Guinea-Bissau, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna any dispute arising out of or in connection with this Agreement, including , without limitation, any dispute regarding its validity or termination, or the performance or breach thereof ("Dispute") will be finally settled by arbitration. The arbitration will be administered by the ICC International Court of Arbitration, in Paris ("Arbitration Body"). In accordance with its arbitration rules ("the Rules") in effect at the time of arbitration, except as may be modified herein or by agreement of the parties. The place of Arbitration will be Paris and the proceedings will be conducted in French. The arbitration will be conducted by three arbitrators. All persons chosen as arbitrators will be impartial. Each party will nominate one arbitrator, and the arbitrators nominated by the parties will jointly appoint an independent chairman. If no chairman is appointed within 30 days of the appointment of the second arbitrator, the chairman will be appointed by the Arbitration Body, in accordance with the Rules. The arbitrators will have no authority to award damages excluded by this Agreement, damages in excess of the limitations contained in this Agreement or injunctive relief. Nothing in this Agreement will prevent either party from resorting to judicial proceedings if interim or provisional relief from a court is necessary either to prevent material prejudice to one party or to third parties, or
to prevent or stop a breach of any confidentiality provisions or intellectual property rights. Nothing in this Agreement will prevent either party from resorting to judicial proceedings as necessary to determine the validity or ownership of any copyright, patent or trademark owned or asserted by a Party to the Agreement, or by any parent company, subsidiary, or affiliate under common control of any Party.

g. In Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Libya, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe any dispute arising out of or in connection with this Agreement, including, without limitation, any dispute regarding its validity or termination, or the performance or breach thereof ("Dispute") will be finally settled by arbitration. The arbitration will be administered by the London Court of International Arbitration ("Arbitration Body"), in accordance with the LCIA arbitration rules ("the Rules") in effect at the time of arbitration, except as may be modified herein or by agreement of the parties. The place of Arbitration will be London and the proceedings will be conducted in English.

The arbitration will be conducted by three arbitrators. All persons chosen as arbitrators will be impartial. Each party will nominate one arbitrator, and the arbitrators nominated by the parties will jointly appoint an independent chairman. If no chairman is appointed within 30 days of the appointment of the second arbitrator, the chairman will be appointed by the Arbitration Body, in accordance with the Rules. The arbitrators will have no authority to award damages excluded by this Agreement, damages in excess of the limitations contained in this Agreement or injunctive relief. Nothing in this Agreement will prevent either party from resorting to judicial proceedings if interim or provisional relief from a court is necessary either to prevent material prejudice to one party or to third parties, or to prevent or stop a breach of any confidentiality provisions or intellectual property rights. Nothing in this Agreement will prevent either party from resorting to judicial proceedings as necessary to determine the validity or ownership of any copyright, patent or trademark owned or asserted by a Party to the Agreement, or by any parent company, subsidiary, or affiliate under common control of any Party.

h. In Estonia, Latvia, and Lithuania: All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

i. In South Africa, Namibia, Lesotho and Swaziland: Any dispute arising out of or in connection with this Agreement, including, without limitation, any dispute regarding its validity or termination, or the performance or breach thereof ("Dispute") will be finally settled by arbitration. The arbitration will be administered by the ICC International Court of Arbitration ("Arbitration Body"), in accordance with the ICC arbitration rules ("the Rules") in effect at the time of arbitration, except as may be modified herein or by agreement of the parties. The place of Arbitration will be Johannesburg, Republic of South Africa and the proceedings will be conducted in English. The arbitration will be conducted by three arbitrators. All persons chosen as arbitrators will be impartial. Each party will nominate one arbitrator, and the arbitrators nominated by the parties will jointly appoint an independent chairman. If no chairman is appointed within 30 days of the appointment of the second arbitrator, the chairman will be appointed by the Arbitration Body, in accordance with the Rules.

The arbitrators will have no authority to award damages excluded by this Agreement, damages in excess of the limitations contained in this Agreement or injunctive relief. Nothing in this Agreement will prevent either party from resorting to judicial proceedings if interim or provisional relief from a court is necessary either to prevent material prejudice to one party or to third parties, or to prevent or stop a breach of any confidentiality provisions or intellectual property rights. Nothing in this Agreement will prevent either party from resorting to judicial proceedings as necessary to determine the validity or ownership of any copyright, patent or trademark owned or asserted by a Party to the Agreement, or by any parent company, subsidiary, or affiliate under common control of any Party.
13. Other Country Unique Terms

UNITED KINGDOM

*The following is added at the end of paragraph one of the signature block:* Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.
This Agreement, including its applicable supplements, is the complete agreement regarding disclosures of Information, and replaces all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between <Company Name> and IBM. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Company are void.

Each party accepts <, on behalf of its enterprise,> the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or, where recognized 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 disclosures of Information under this Agreement are subject to it.

Agreed to:

<Company Name> (“Company”)  
By ________________________________  By ________________________________

Authorized Signature  
Name (type or print):  
Date:  
Identification number:  
Company Address:

Agreed to:

IBM Ireland Limited (“IBM”)  
By ________________________________

Authorized Signature  
Name (type or print):  
Date:  
Agreement number:  
IBM address:

IBM House  
Shelbourne Road  
Ballsbridge  
Dublin 4  
Ireland

After signing, please return a copy of this Agreement to the “IBM address” shown above.