



IBM Business Partner Agreement for Software Value Plus

This IBM Business Partner Agreement for Software Value Plus ("Agreement") governs your IBM Business Partner relationship with IBM as a Remarketer and transactions under such relationship in which you market the Products and Services you are approved to market.

1. Definitions

Customer – either an End User or a Remarketer.

End User – a party, who is not part of the Enterprise of which you are a part, who acquires Products or Services for its own use and not for resale. The term "End User" does not include a party who is part of the Enterprise of which you are a part.

Enterprise – any legal entity and the subsidiaries it owns by more than 50%. The term "Enterprise" applies only to the portion of the enterprise located in the country in which the Business Partner that signed the Agreement is located, as indicated in the signature block. Any reference to IBM with regard to Service shall mean the respective IBM Company to which such part of the Agreement shall be assigned.

IBM Business Partner (also called "Business Partner") – a business entity that has an IBM Business Partner Agreement with IBM under which it is approved to market Programs or Services.

Incentive – a rebate, fee, instant discount, or other benefit or compensation IBM may make available to Business Partners under this Agreement.

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 applicable Operations Guide.

Participation Criteria – the minimum and mandatory requirements specified for the Remarketer types and applicable Software Value Plus Programs and Product Groups that the IBM Business Partner must meet and maintain for marketing the Products and Services.

Program (also called "Product") – 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.

Public Sector End User – (i) the government of any country, state, province, 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. The following entities are not Public Sector End Users: privately-owned and controlled utility companies, hospitals, and research institutes that operate using non-government funds.

Remarketer – a business entity that acquires Products or Services for the purpose of marketing.

Service – performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as an information database) that IBM may provide to you or approve you to market.

Any reference to IBM with regard to Service shall mean the respective IBM Company to which such part of the Agreement shall be assigned

Trademark – any title, trademark, registered trademark, or service mark (including without limitation the IBM Business Partner title and emblem) owned by International Business Machines Corporation, which International Business Machines Corporation may authorize you to use.

Western Europe – the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia,

Liechtenstein, Lithuania, Luxemburg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Spain, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State

2. Marketing Approvals

2.1 Remarketer Types

Remarketer types are based upon respective Product approvals, as specified in the Operations Guide. Remarketer types include, without limitation, Value-Added Reseller, Solution Provider, and (in countries where applicable) Government Reseller. The Remarketer type for which you are approved, and the respective Product Group and Program approvals, are specified under Details of Our Relationship.

2.2 Eligible Programs, Eligible Parties, Eligible Incentives, and Subsequent Approvals

2.2.1 Eligible Programs

Programs you are approved to market are specified under Details of Our Relationship. Such Programs may be specified individually or as part of a particular “Product Group” in which the Program is included. Program and Product Group approvals are specified for the respective Remarketer type for which you are approved.

For Programs that are specified as part of a Product Group, IBM makes a listing of such Programs available to you on the IBM Internet website specified in the “Product Group” section of the Operations Guide. You agree to monitor the Operations Guide and the website on a regular basis for changes.

You acquire Programs from a designated IBM Distributor.

2.2.2 Eligible Parties

Parties to whom you are approved to market are specified under Details of Our Relationship.

Government Resellers are only approved to market to Public Sector End Users, as specified in the Operations Guide.

2.2.3 Eligible Incentives

Incentives are described under section 13 (Incentives).

2.2.4 Subsequent Approvals

Any subsequent approvals provided to you by IBM after the contract start date specified under Details of Our Relationship will be specified in a Details of Our Relationship—Modification. Such subsequent approvals 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 this Agreement under Details of Our Relationship, 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 in this Agreement and the Details of Our Relationship—Modification, the terms of the Details of Our Relationship—Modification will prevail.

3. Agreement Structure, Acceptance, and Contract Duration

3.1 Agreement Structure

This Agreement and additional terms provided by IBM in applicable Attachments and Transaction Documents is the complete agreement regarding your IBM Business Partner relationship with IBM as a Remarketer of Software Value Plus Products and Services, and replaces any prior oral or written communications between you and IBM.

Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

3.1.1 Attachments and Transaction Documents

Attachments contain additional terms that apply to your Business Partner relationship. Applicable Attachments are specified under Details of Our Relationship.

Transaction Documents contain specific details and terms related to individual transactions (for example, an addendum).

3.1.2 Order of Precedence

If there is a conflict among the terms in the various Agreement documents, 1) the terms of a Transaction Document prevail over those of an Attachment and this Agreement, and 2) the terms of an Attachment prevail over those of this Agreement.

If there is an order of precedence within a type of Agreement document (for example, a conflict between the terms of two Attachments to this Agreement), such order will be stated in the applicable documents.

3.2 Acceptance

Unless a handwritten signature is specifically required by IBM, any document required to be signed under this Agreement may be signed by hand or, where recognized by law, electronically.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

3.2.1 Your Acceptance of Transaction Documents, Subsequent Attachments, and Details of Our Relationship—Modifications

You accept the terms of Transaction Documents and any Attachments or Details of Our Relationship—Modifications provided by IBM after you accept the terms of this Agreement by doing any of the following:

- a. signing them;
- b. marketing or ordering the Product or Service;
- c. accepting or using the Product or Service, or allowing others to do so;
- d. providing the Product or Service to your Customer; or
- e. making any payment, or registering for an incentive opportunity or requesting an incentive payment for the Product or Service.

3.3 Contract Duration

IBM specifies the contract start date and duration under Details of Our Relationship. Unless IBM specifies otherwise in writing, the Agreement will be renewed automatically for subsequent two-year periods. However, you may advise IBM in writing not to renew the Agreement. Each of us is responsible to provide the other three-months' written notice if this Agreement will not be renewed.

3.4 Changes to Agreement Terms

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, ongoing transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, you may request that IBM defer the change effective date until the end of the current contract period.

You acknowledge your agreement to have these changes apply for transactions by (i) placing new orders for or marketing Products or Services after the change effective date, (ii) failing to request that the change effective date be deferred until the start of the new renewal period, (iii) allowing transactions to renew after receipt of the change notice, or (iv) failing to terminate non-expiring transactions prior to 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:

- a. those this Agreement states do not require advance notice;
- b. the list of Programs for a particular Product Group unless otherwise limited by this Agreement; and
- c. those relating to safety and security.

Changes to the Agreement terms may be communicated electronically in accordance with section 4.4 (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.

4. Our Relationship

4.1 Independent Contractors

Both parties are independent contractors, and this Agreement is non-exclusive. Neither party is a legal representative or legal agent of the other. Neither party 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 franchisee of the other, nor does this Agreement create a joint venture between the parties.

Each party is responsible for its own expenses regarding fulfillment of its responsibilities and obligations under the terms of this Agreement.

Neither party will assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized.

4.2 Dispute Resolution

Each party will allow the other a reasonable opportunity to comply before it claims the other has not met its obligations under this Agreement, unless otherwise specified in the Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

4.3 Assignment

IBM reserves the right to assign this Agreement, in whole or in part, on written notice. IBM is also permitted to assign its rights to payments without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its Business Partners. IBM reserves the right to have this Agreement or any part thereof performed by another IBM organization or designee.

Your rights under this Agreement are not property rights and, therefore, you can not transfer them to another party or encumber them in any way. For example, you can not sell your approval to market IBM's Products or Services or your rights to use IBM's Trademarks.

You agree not to assign or otherwise transfer this Agreement, your rights under this Agreement, or any of its approvals, or delegate any duties, unless expressly permitted to do so in this Agreement or in writing. Otherwise, any attempt to do so is void.

4.4 Electronic Communications and Notices on IBM's Internet Website

4.4.1 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, an applicable Attachment or Transaction Document, or the primary relationship contact you specify on your PartnerWorld Profile on IBM's PartnerWorld website. 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.

4.4.2 Notices on IBM's Internet Website

IBM provides some Attachments and Transaction Documents, 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 Transaction Document 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.

4.5 IBM's and Your Responsibilities

a) we may withdraw a Product or Service from:

- (1) a type of Business Partner or a method of distribution with six months notice, and
- (2) marketing at any time.

b. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one.

c. Neither of us is responsible for failure to fulfill non-monetary obligations due to causes beyond the reasonable control of either of us.

- d. IBM does not guarantee the results of its marketing plans.
- e. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to you under the Agreement may be terminated if you fail to fulfill your applicable payment obligations.
- f. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- g. IBM's performance under this Agreement is subject to export licensing, which licensing is beyond IBM's control and IBM does not assume any responsibility for it. You agree to provide any information necessary to apply for such approvals and to comply with all conditions of such approvals.

Notwithstanding the definition of your authorization to market Products and Services, you should be aware that export, relocation or re-direction of Products and Services and related items is subject to regulations, for example, of the country of installation, the United States of America and the original country of export, and may be prohibited by law. It is your responsibility to comply with any such regulations and to obtain all necessary licenses as applicable.

We may terminate this Agreement on written notice if we have reason to believe that you have violated these terms or that such violation is likely to occur.

- h. IBM will make any payments under this Agreement at its election to your bank account held in your name in the country in which the responsibilities have been performed or in which you are located, in U.S. Dollars or in the local currency of the country in which the responsibilities have been performed, based on the official exchange rate on the date of payment.

4.6 Your Other Responsibilities

You agree:

- a. For the purposes of this item a, the following additional definitions shall apply:

(1) Definitions

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 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"), on the basis of an

- “Informative Notice” given by IBM to Business Contact Personnel and the related obtained consent, whenever required by law; 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.
- b. to transfer Business Contact Information 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;
 - c. as notification of IBM's approvals under this Agreement, that IBM may provide information you provide to IBM in your respective applications and other information you may otherwise provide to confirm your eligibility or identify marketing opportunities (for example, current certifications and transaction activity) to the IBM Distributor, and you authorize IBM to do so. You also agree to obtain any consents needed so that IBM can use the information you provide to IBM for the intended purpose;
 - d. to conduct business activities with IBM (for example, submitting applications and incentive payment requests) as IBM specifies, which may be in an Operations Guide, using IBM's automated electronic system if available. You agree to pay all expenses associated with your use of IBM's system (for example, your equipment and communication costs);
 - e. as reasonably required for IBM to fulfill its obligations and to review your compliance with this Agreement, to provide IBM, or IBM's representative, with sufficient and safe access to your facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by your delay in providing such access or performing your other responsibilities under this Agreement;
 - f. for each Product 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 criteria specified, and
 - (b) for each Product Group for which you are approved, you will maintain the capability to perform the activities that are required;
 - g. to maintain trained personnel for the Programs you are approved to market;
 - h. to maintain the capability to demonstrate the Programs, as IBM specifies in the Operations Guide;
 - i. For the purpose of this item i, “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 organizational measures and other protections for the Personal Data, (including, without limitation, not loading any Personal Data which we have 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 any Personal Data was, or could be, accessed, used or acquired by an unauthorized person or compromised in any way;

- (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.
- j. to maintain your membership as an IBM PartnerWorld participant and participant in PartnerWorld offerings, as specified in the Operations Guide;
- k. to participate in the marketing activities as requested by IBM;
- l. to retain records, as IBM specifies in the Operations Guide, of each transaction for at least three years (for example, sales documents identifying your Customer and applicable Product-specific information, and incentive payment requests) for three years and to provide us relevant records on request. IBM may reproduce and retain copies of these records;
- m. that when IBM provides you with access to IBM's information systems, it is only in support of your marketing activities associated with your IBM Business Partner relationship. Programs IBM provides to you for your use with IBM's 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. You agree you will comply with the license terms and the additional restrictions in this Agreement and use the Programs only for the purpose for which they were provided to you;
- n. that before you change IBM Distributors, you will provide IBM written notice, as specified in the Operations Guide. Any limitation on the number of times you may change Distributors will also be specified in the Operations Guide;
- o. to provide IBM, or your designated Distributor upon its request to you, marketing, sales, installation reporting, and inventory information for Programs, as we specify in the Operations Guide;
- p. to promptly provide IBM with documents IBM may require from you or the End User (for example, our license agreement signed by the End User and you) when applicable;
- q. to assist IBM or your designated Distributor in tracing and locating Programs as IBM requires;
- r. if you are approved to market to Remarketers, you will only market to Remarketers who have been approved by IBM to market the same Products or Services;
- s. 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; and
- t. you will ensure that the Microsoft Certificate of Authenticity (COA) and Associated Product Material (APM) included with IBM Products containing Microsoft Programs are not removed and are provided with the IBM Product to the End User. Such Microsoft Programs are not to be priced separately.

4.7 Your Responsibilities to Customers

You agree to:

- a. identify and select the required technology based upon the End User's requirements;
- b. be responsible for your Customer's satisfaction regarding all of your activities associated with your Business Partner relationship with IBM, and to participate in customer satisfaction programs as IBM determines;
- c. inform the Customer of Program installation requirements, and provide configuration support;
- d. comply with the terms regarding Product upgrades as we specify in the Operations Guide;
- e. assist your Customer in Product problem determination and resolution and advise your Customer of the availability of such support offerings;
- f. subject to IBM's return policy for a Product, refund the Customer the amount it paid for the Product when it returns the Product to you. You may return such Products to the IBM Distributor from whom you acquired them, for credit;
- g. be the primary contact for Product 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 Products. If you do, you retain customer satisfaction responsibilities;

- h. provide a dated written record to your Customer, such as a sales receipt or an invoice, which specifies the End User's name;
- i. inform your Customer that the sales receipt (or other documentation IBM 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 Product upgrades; and
- j. if you are approved to market Products to Remarketers under this Agreement, require them to comply with the terms of this section when they market Products to a Customer.

4.8 IBM's Review of Your Compliance with this Agreement

IBM may periodically review your compliance with this Agreement. You agree to provide IBM with relevant records on request. IBM may reproduce and retain copies of these records. IBM, or an independent auditor, may conduct a review of your compliance with this Agreement on your premises during your normal business hours.

If, during the review of your compliance with this Agreement, it is determined you have failed to comply with any material term of this Agreement, in addition to IBM's rights under law and the terms of this Agreement, for transactions that are the subject of the breach, you agree to refund the amount equal to any incentive payment IBM gave you for the applicable Products or Services or IBM may offset any amounts due to you from IBM.

5. Business Conduct Requirements

5.1 Compliance with Laws

You will comply with all applicable laws and regulations, including, without limitation, the US 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. IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to your business or your End User's business, including those relating to Products and Services that you acquire under this Agreement, or that IBM's provision of or your or your End User's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

5.2 Prohibition on Gifts

You agree that you 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.

5.3 IBM Code of Conduct

You agree to comply with the IBM Code of Conduct, a current version of which is available on the following IBM Internet website:

http://www.ibm.com/partnerworld/pwhome.nsf/weblook/pub_join_memctr_agreement_code.html.

IBM may change the Code of Conduct at any time by posting a revised Code of Conduct on the above website or by providing you with notice as otherwise provided in this Agreement. You represent that you have read the Code of Conduct and agree to monitor the website regularly for changes to the Code of Conduct. Such changes are effective immediately when they are posted to the website.

If you market to a Remarketer who does not have a contract with IBM subject to section 11 (License Terms), you agree to require such Remarketer to comply with the Code of Conduct and monitor the website on a regular basis in accordance with this section 5.3.

5.4 Export and Import

You may actively market Products and Services only within Western Europe. You may market Programs as permitted by their licensing terms. You may not market outside this scope and you agree not to use anyone else to do so. Products you export (or which are acquired by a Remarketer for export) outside such countries will not count toward attainment of your objectives and will not qualify for applicable promotional offerings and marketing funds. IBM may also reduce future supply allocations to you by the number of exported Products.

5.4.1 Export and Import Restrictions

5.4.1.1 Compliance with Export and Import Laws

You warrant that you:

- a. are and will remain knowledgeable about, applicable export and import laws, regulations, orders, and policies, including, but not limited to, those of the United States (which, in some instances, prohibit or restrict in-country marketing to certain Customers);
- b. when you market Products, Services, and technical data, and otherwise in connection with this Agreement, will comply with such laws, regulations, orders, and policies and will secure all necessary clearance requirements, export and import licenses and exemptions, and make all proper filings;
- c. will comply with applicable prohibitions on delivery of Products, prototypes, and technical data and provision of Services to certain End Users and for certain end uses, including, but not limited to, nuclear facilities, space or missile systems, and weapons systems (whether chemical, biological, or otherwise);
- d. will use your best efforts to ensure that your Customer complies with such laws, regulations, orders, and policies; and
- e. will comply with all additional export and import restrictions in any applicable Attachment or Transaction Document under this Agreement.

5.4.1.2 Exporting by You

You agree that if you export or import (for example, if you are approved for a geographic scope that includes multiple countries) Products, Services, and technical data, you, and not IBM, will act as the exporter or importer.

In addition to your obligations under section 5.4.1.1 (Compliance with Export and Import Laws) above, you agree that; i) Products and Services may not be marketed to Abu-Dhabi, Bahrain, Bangladesh, Dubai, Kuwait, Oman, Qatar and Saudi Arabia; and ii) Products may not be marketed to the following Latin American countries—Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua and Panama.

5.4.1.3 Export and Import Compliance Verification

IBM may, in its sole discretion, require you from time to time to provide IBM 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.

5.4.2 Customer Exports

If a Customer exports a Product outside of Western Europe, IBM's responsibilities (including, but not limited to, warranty or support obligations), if any, under the IBM License and Product Terms or otherwise under this Agreement no longer apply to that Product, unless the Product's warranty or license terms state otherwise, and you agree to notify Customer of same. Before your sale of such Product, you agree to prepare a support plan for it and obtain your Customer's agreement to that plan. Within one month of sale, you agree to provide IBM with the Customer's name and address, machine type/model, and serial number if applicable, date of sale, and destination country.

5.4.3 Marketing to Remarketers

If under the terms of this Agreement you may market an eligible Product to a Remarketer who does not have a contract with IBM for marketing that Product, you agree you will require the Remarketer to comply with applicable export and import laws, regulations, orders, and policies, as specified under section 5.4.1 (Export and Import Restrictions).

If your Remarketer markets an eligible Product to a subsequent Remarketer who does not have a contract with IBM for marketing that Product, you further agree you will require your Remarketer to require the subsequent Remarketer to comply with applicable export and import laws, regulations, orders, and policies, as specified under section 5.4.1.

You further agree you will require your Remarketer to (i) notify its End Users and subsequent Remarketers of the restrictions and requirements specified under section 5.4.2 (Customer Exports) and (ii) require subsequent Remarketers to give such notice to their End Users.

5.4.4 Third Party Claims

You will indemnify IBM from all claims arising from: (i) your failure to comply with the provisions of this section 5.4; or (ii) your failure to require, in writing, your Remarketers who do not have a contract with IBM to market Products to comply with applicable export and import laws, regulations, orders or policies, as specified under section 5.4.1.1 and to further require your Remarketers to place a similar written requirement on any subsequent Remarketers to ensure all applicable Remarketers are required to comply.

5.5 Special Bids

Special bids (for example, a special discount or price) (called "Special Bids") are provided to you on the basis that the information you provided to IBM or your Distributor in your Special Bid request is truthful and accurate. If the information you provided in your Special Bid request changes, you must immediately notify IBM or your Distributor. In such event, IBM reserves the right to modify the terms of the Special Bid or to cancel your Special Bid authorization. If you fail to provide truthful and accurate information on Special Bid requests, then IBM or your Distributor shall be entitled to recover from you (and you shall be obligated to repay) the amount of any additional discounts IBM provided in the Special Bid and take any other actions authorized under this Agreement. Special Bid authorizations and the terms applicable to that Special Bid are IBM's confidential information, which is subject to the IBM Agreement of Exchange of Confidential Information.

You accept the terms of the Special Bid by:

- a. accepting the Products or Services for which you are receiving a Special Bid;
- b. providing the Products or Services to your Customer; or
- c. paying for the Products or Services.

The Special Bid discount or price for eligible Products or Services are subject to the following:

- a. no other discounts, incentive offerings, rebates, or promotions apply to the Products and Services, unless IBM or your Distributor specifies otherwise in writing;
- b. the applicable Products and Services are subject to availability;
- c. you agree to the additional terms contained in the Special Bid Addendum;
- d. you are required to advise the IBM Global Financing or your Distributor, as applicable, of any Special Bid pricing for any Products or Services for which you arrange financing; and
- e. you or if applicable, your Remarketer must resell the Product or Service to the End User associated with the Special Bid by the date indicated in the Special Bid request.

If applicable, you may only market the Products and Services to the Remarketer that you have stated in the Special Bid request is bidding to the End User for the transaction specified in the Special Bid request. You are responsible to require your Remarketers who do not have a contract with IBM to market such Products and Services to comply with the Special Bid terms contained in this Agreement and in the applicable Special Bid Addendum that IBM or your Distributor provides for the Special Bid.

If you are requesting a specific End User price or discount in your Special Bid, you agree that you will, or you will require your Remarketer to, as applicable, ensure that the intended End User receives the financial benefit of the Special Bid.

5.5.1 IBM's Audit of Special Bid Transactions

IBM may audit any Special Bid transactions in accordance with the terms of section 4.8 (IBM's Review of Your Compliance with this Agreement). Upon IBM's request, you agree to provide IBM or our auditors with documentation including, but not limited to, evidence i) of shipment of the applicable Special Bid Products to the designated End User, ii) such as invoices, purchase orders, or other documentation when the Special Bid is based on pricing requested for the End User, or iii) that you or your Remarketer, as applicable, own and use the Special Bid Products for at least the Service Period to provide to End Users the service offerings described in the Details of IBM Special Bid.

You are prohibited from entering into agreements with others or otherwise accepting obligations that restrict IBM's ability to audit Special Bid transactions. If you violate this prohibition, IBM or your Distributor may invalidate the Special Bid and charge you for each Special Bid Product up to the difference between (i) the discounted price to which you are entitled on the date of the Special Bid Addendum, and (ii) the amount IBM invoiced you.

6. Marketing Funds and Promotional Offerings

IBM may provide marketing funds and promotional offerings to you. If we do, you agree to use them according to IBM's guidelines and to maintain records of your activities regarding the use of such funds and offerings for no less than three years. IBM may withdraw or recover marketing funds and promotional offerings from you if you fail to comply with 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 IBM specifies otherwise in writing.

7. Status Change

You agree to give IBM prompt written notice (unless precluded by law or regulation) of any change or anticipated change in your financial condition, business structure, or operating environment (for example, a material change in equity ownership or management or any substantive change to information you provided to IBM when you applied to become an IBM Business Partner). Upon notification of such change, (or if you fail to give notice of such change) IBM may, at its sole discretion, terminate this Agreement on written notice to you.

8. Confidential Information and Nondisclosure

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. Except as provided in this section 8, confidential information should be marked with a restrictive legend or otherwise identified by the disclosing party as confidential at the time of disclosure subject to the terms of the AECI. If there is a conflict between the terms of this section 8 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; and
- d. IBM's business and marketing plans and strategies.

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

Except as otherwise allowed under this section 8, neither party will disclose the terms of this Agreement, unless both parties agree in writing to do so, or unless required by law.

Either party may disclose the terms of this Agreement to the Business Partner's designated IBM Distributor, unless otherwise prohibited by this Agreement.

9. 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.

9.1 IBM's Liability

Regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if recurring, 12 months' charges apply) for the Product or Service 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.

9.2 Items for Which IBM Is 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:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages, or for any economic consequential damages; or
- c. 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.

9.3 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 authorized by IBM.

10. IBM's Trademarks

For the purpose of this section 10, "IBM" means "International Business Machines Corporation."

You may use the IBM Business Partner title and emblem and any other Trademark IBM may specify to you. YOU ARE NOT AUTHORIZED TO USE IBM's "8-BAR" LOGO. IBM will specify Trademarks you are authorized to use in the applicable Operations Guide for the specific Trademark initiative. You agree that your use of such Trademarks may be subject to additional terms and limitations in a separate agreement with IBM. You agree to comply with all terms governing your use of IBM's Trademarks.

IBM will notify you in writing of the applicable IBM Business Partner title and emblem you are authorized by IBM to use. You may not modify the IBM Business Partner emblem in any way. IBM makes written guidelines regarding the use of the IBM Business Partner title and emblem available to you on IBM's Internet website at http://www-01.ibm.com/partnerworld/pwhome.nsf/weblook/emblem_welcome.html. You are responsible for monitoring the website on a regular basis for any changes IBM may make to the guidelines.

You may use the Trademarks only:

- a. within Western Europe;
- b. in association with IBM's Products and Services you are approved to market; and
- c. as described in the written guidelines provided to you by IBM.

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 for IBM's Products and Services.

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

You agree not to register or use any mark that is confusingly similar to any of IBM's Trademarks.

IBM's Trademarks, and any goodwill resulting from your use of IBM's Trademarks, belong to IBM.

11. License Terms

11.1 IBM 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 applicable to a Program are referred to in this section as "License Documents." IBM makes License Documents available on the following IBM Internet website: <http://www-03.ibm.com/software/sla/sladb.nsf>.

IBM may provide additional instructions regarding License Documents in the Operations Guide. Collectively, the License Documents are referred to as the "IBM License Terms."

11.2 Non-IBM License Terms

Non-IBM Products are subject to the terms of any agreements provided by the non-IBM supplier or manufacturer of that Product.

IBM provides non-IBM Products WITHOUT WARRANTIES OF ANY KIND, unless IBM specifies otherwise. However, the non-IBM manufacturers, suppliers, or publishers may provide their own warranties.

For non-IBM Products IBM approves you to market, you agree to inform your Customer in writing 1) that the Products are non-IBM, 2) the manufacturer or supplier who is responsible for warranty (if any), and 3) of the procedure to obtain any warranty service.

11.3 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 finalized.

11.4 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 finalized. You further agree to require such Remarketer to comply with the IBM Code of Conduct, a current version of which is available on the following IBM Internet website:

http://www.ibm.com/partnerworld/pwhome.nsf/weblook/pub_join_memctr_agreement_code.html, and to monitor the website regularly for changes to the Code of Conduct.

11.5 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 authorized 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.

11.6 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 and to require its subsequent Remarketers to comply with the IBM Code of Conduct 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.

11.7 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, ii) provide the IBM Code of Conduct to a Remarketer, or iii) 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.

12. Demonstration and Development Products

Products IBM makes available for demonstration, development, and evaluation purposes and instructions for acquiring such Products are specified in the Operations Guide. Your acquisition and use of such Products will be subject to a separate agreement with IBM, the Program's applicable license terms, and any additional terms IBM may include in this Agreement regarding Products you are approved to market under this Agreement (for example, in an applicable Attachment).

13. Incentives

13.1 Definitions for Incentives Section

The following terms are defined for the purpose of this section 13 and associated Attachments:

Eligible Product – a Product or Product Group IBM specifies under the “Eligible Product List” for a particular Incentive in the Operations Guide or which IBM approves as part of any Value Add. Part numbers which do not include IBM Program licenses (such as an annual software subscription and support renewal), and Programs IBM provides in a tangible format are not eligible, unless otherwise specified by IBM.

Eligible Transaction – the sale of an Eligible Product to an End User, where the opportunity for such sale was submitted to IBM by you and approved for the applicable offering according to IBM's instructions and meets the requirements specified in the Operations Guide. However, IBM excludes all transactions covered under any other agreement with IBM (for example, an OEM or ASL agreement) and any other exclusions or restricted transaction types specified in the Operations Guide.

IBM Sales Order Date – the date a sales order is created within the IBM ordering system as the result of IBM's receipt of an order, which has been issued to IBM in connection with an Eligible Transaction.

Identification – the identifier IBM provides to you (for example, a solution identification number or opportunity number) which must be included with each order for Eligible Products that are part of a Solution Transaction to verify your eligibility for Incentives or pricing from your Distributor.

Solution Transaction – the sale of an Eligible Product incorporating any applicable Value Add.

Value Add – a software application, a service, or combination of a software application and a service built around IBM software technology, or other value add, as described in the applicable Operations Guide. The Value Add must be approved and validated by IBM and assigned an Identification, if applicable, as specified in the Operations Guide.

13.2 Incentives Overview

IBM may provide Incentives for marketing certain Products and Services which results in an Eligible Transaction. Incentives and eligibility requirements are specified in the applicable Operations Guide. Certain Incentives may require additional terms, which will be provided by IBM in an applicable Attachment.

Some Incentives are provided through IBM Distributors and, for these Incentives, IBM may publish a specific discount grid which contains the suggested discount from Distributors to their Remarketers. However, the actual discount a Remarketer receives from a Distributor is determined solely by the Distributor and not IBM.

As specified in the Operations Guide, you agree to notify IBM in writing if your Enterprise is participating in IBM offerings identified in the Operations Guide as being mutually-exclusive. You may not participate in a mutually-exclusive offering unless otherwise specified in the Operations Guide. Additionally, for some Eligible Transactions, applicable Incentives may be mutually-exclusive.

13.3 Your Responsibilities Regarding Incentives

You agree:

- a. to provide a single point of contact, as specified in the Operations Guide;
- b. that Incentives will only be applicable on Eligible Transactions that are processed through your designated Distributor or IBM, as applicable, unless otherwise approved by IBM;
- c. to submit the Eligible Transaction opportunity to IBM in the period of time and format specified in the Operations Guide. IBM will confirm or reject opportunities you submit to IBM in a reasonable time period, as specified in the Operations Guide;

- d. to provide IBM with the required supporting documentation in the period of time, as specified in the Operations Guide;
- e. to monitor the Operations Guide on a regular basis for changes to the listing of Eligible Products;
- f. to provide to your Distributor your Identification, as specified in the Operations Guide;
- g. to use only currently-marketed and supported Eligible Products with any Value Add; and
- h. you will revalidate your Value Add each year as specified in the Operations Guide.

13.4 Incentives and Payment

- a. Any Incentive IBM provides will be 1) for Eligible Transactions and 2) based on activities you perform, as specified in the Operations Guide.
- b. Eligible Transactions are determined at IBM's sole discretion.
- c. You earn the Incentive when the order, which meets the criteria of an Eligible Transaction, is processed by IBM and IBM receives from you the required documentation, as specified in the Operations Guide.
- d. IBM specifies Incentive calculations and provides Incentives, as specified in the Operations Guide.
- e. You agree to submit a request for payment to IBM for the amount and in the format and period of time, as IBM specifies in the Operations Guide. Payment processes will be specified in the Operations Guide.
- f. For a Solution Transaction, if the Value Add is a specified percentage of the combined total billed value of the transaction the specific percentage required and any additional requirements, if any, for the sale, will be provided in the applicable Operations Guide. Billing for the transaction may be on one or more invoices from you, or from you and IBM (if specified as applicable by IBM), but must be generated within a particular period of time, as specified in the Operations Guide. The value of the Eligible Products is calculated as specified in the Operations Guide.
- g. If for any reason an Eligible Product you marketed is returned to IBM or if IBM either overpays you or pays you an Incentive which is later determined by IBM to be unearned, you agree to reimburse IBM the amount of such Incentive or overpayment upon IBM's notice to you and within the period of time IBM specifies in such notice.
- h. If you receive an Incentive for an Eligible Transaction, you may be ineligible to receive Incentives for the same transaction under any other offerings.
- i. IBM may withhold the Incentives earned under this Agreement if you owe IBM funds either under this Agreement or for another IBM offering.

13.5 Request for Fees or 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.

13.6 Marketing to Public Sector End Users

If you are eligible for fees or compensation for marketing Products and Services 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 products 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 products and 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 Products and Services including that you may receive a fee from IBM for such marketing activities and 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.

14. Agreement Termination

Regardless of the contract duration specified in the Details of Our Relationship, or any renewal period in effect, either party may terminate this Agreement on three months' written notice to the other. If, under applicable law, a longer notice period is mandatory, then the notice period is the minimum notice period allowable.

If either party fails to comply with a material term of this Agreement, the other party may terminate this Agreement on written notice to the non-compliant party. 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 products and services to Public Sector End Users while holding a contract with the Public Sector End User to advise on the selection of products and services or if you submit a project form for a fee payment under this Agreement requesting approval to market IBM Products and Services to Public Sector End Users while holding a contract with the Public Sector End User to advise on the selection of products and services or if you do not fulfill your responsibilities regarding licensing agreements. You agree that IBM's only obligation to you regarding notice of termination is to provide the notice called for in this section 14 (Agreement Termination) and IBM is not liable for any claims against you or losses you may incur if IBM terminates this Agreement with no additional notice.

License termination is specified in the applicable Program license agreement. Termination of a Service is specified in an applicable Attachment.

You agree that if IBM permits you to perform certain activities after Agreement termination or non-renewal (for example, to complete the fulfillment of an order to your Customer), you will do so within the period of time IBM specifies and under the terms of this Agreement.

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

15. Governing Law and Arbitration/Jurisdiction

Both parties agree to the application of the substantive laws of Austria to govern, interpret, and enforce all of your and IBM's 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.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement remain in full force and effect.

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 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.

Details of Our Relationship

1. Contract Start Date and Duration

Start Date:

Duration: Two Years

Territory:

2. Product Group and Remarketer Type Approvals

Note: Product Groups specified in this section are approved only for the respective Remarketer type in the adjacent column.

Product Group	Remarketer Type Approval ("Yes" indicates approval)		
	Solution Provider	Value-Added Reseller	Government Reseller

3. Parties to Whom You Are Approved to Market

"Yes" indicates approval.

Note: you must first be approved as a Government Reseller for the approval to market to Public Sector End Users Only to apply.

All End Users _____ Public Sector End Users Only _____ Remarketers _____

4. Attachments and Associated Product Groups

4.1 Attachments

Attachments for which you are approved are specified in this section.

Attachment Name	"Yes" indicates approval.
IBM Business Partner Agreement—Attachment for Primary Support Provider (EMEA-_BPSVPPSPS)	
IBM Business Partner Agreement—Attachment for Business Partner-Led Model (BPSVPBPLM)	
IBM Business Partner Agreement—Attachment for Machines Acquired for Appliances and Workload Optimized Systems (BPAMWOS)	
IBM Business Partner Agreement—Attachment for Financing Services from IBM (BPAFSI)	

4.2 Associated Product Groups and Programs

Product Groups and Programs associated with the Primary Support Provider and Business Partner-Led Model Attachments in section 4.1 are specified below in this section 4.2, as applicable.

Note: these Product Groups and Programs can only be equal to or a subset of those approved for Remarketer types Solution Provider and Value-Added Reseller.

4.2.1 Primary Support Provider

Note: the Primary Support Provider Attachment must be approved in section 4.1 for the respective Product Groups and Programs in this section to apply.

Product Group / Program

4.2.2 Business Partner-Led Model

The Business Partner-Led Model Attachment must be approved in section 4.1 for the respective Product Groups in this section to apply.

In the following matrix, applicable Coverage Groups will be specified in the column(s) to the right of the column on the left that specifies the applicable Product Group or combination of Product Groups, and "Yes" is used to specify the Coverage Group(s) to which the Product Group or combination of Product Group apply.

Product Group	Coverage Groups			

5. 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 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.

This IBM Business Partner Agreement for Software Value Plus, including its applicable Attachments and Transaction Documents, is the complete agreement between you and IBM regarding your IBM Business Partner relationship with IBM as a Remarketer under which you market and obtain certain Programs licenses and Services and replaces any prior oral or written communications between you and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) estimated completion dates, hours, or charges to provide any Service; ii) performance or function of any Program or system, other than as expressly warranted by IBM; iii) the experiences or recommendations of other parties; or iv) 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 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 Programs marketed under this Agreement are subject to it. Each party accepts the terms of the IBM Agreement for Exchange of Confidential Information subject to section 8 (Confidential Information) of this Agreement. You further agree to comply with the terms of the Code of Conduct subject to section 5.3 (Code of Conduct) of this Agreement.

After signing this Profile, please return a copy to the IBM address shown below.

Date received by IBM: _____

Agreed to:

Agreed to:

IBM Ireland Product Distribution Limited ("IBM PDL")

By: _____

By: _____

(Authorized signature)

Name (type or print):

Date:

IBM Business Partner Address:

(Authorized signature)

Name (type or print):

Date:

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