

Distribution Request Form for IBM DB2 Express-C and/or WAS CE

Thank you for your interest in IBM's DB2 Express-C and/or IBM's WebSphere Application Server Community Edition ("WAS CE"). Your application for registration to distribute one or both of these products will be considered once we have received your completed request form and authorized signature. If your application is approved by IBM, a letter will be issued to the noted Administrative Contact confirming your registration and authorizing you to distribute DB2 Express-C and/or WAS CE pursuant to the terms and conditions of the Distribution Agreement for IBM DB2 Express-C and WAS CE, attached to this form.

This request form must be completed and submitted in one of the following two ways:

- eFAX to: 845-489-9554, attn: DB2 Express-C and WAS CE Distribution Request
- Email to db2x@ca.ibm.com Subject: DB2 Express-C and WAS CE Distribution Request

Please tell IBM about your company or organization:

Complete Name of Company/Organization ("Entity"):

Entity Website: _____

Which of the following best describes your company or organization?

- A. Independent software vendor
- B. Hardware vendor
- C. Systems Integrator/Independent Consulting firm
- D. IBM, or IBM subsidiary
- E. Software reseller/distributor
- F. Open Source Project
- G. Customer or company looking use/acquire software solutions
- H. Educational or training institution
- I. Other, please specify _____

Is your company/organization currently an IBM Business Partner or member of IBM PartnerWorld?

Yes No If yes, specify PartnerWorld ID# if known: _____

Which IBM products do you intend to distribute: "" DB2 Express-C or ""WAS CE or ""Both

Which product/application do you intend to distribute with DB2 Express-C and/or WAS CE?

Name of Product/Application: _____

Version/Release/Issue Number: _____

Product Type: Proprietary Open Source Other: _____

Product Pricing: [] Free [] Fee-based license [] Fee-based support

IBM DB2 Express-C and/or WAS CE Distribution Request Form

Product Description: _____

Product Website: _____

Please describe the intended use of DB2 Express-C and / or WAS CE with your Product:

Please tell IBM about the intended distribution of **DB2 Express-C** (please check all applicable):

Which Version(s) and Release(s) of DB2 Express-C do you intend to distribute? _____

For which Operating System platforms do you intend to distribute DB2 Express-C?

Windows 32-bit (x86) Windows 64-bit (x64) Solaris (x64) Mac OS

Linux 32-bit (x86) Linux 64-bit (x86-64) Linux on POWER (PPC 64-bit)

How many copies of DB2 Express-C do you intend to distribute?

< 100 copies 100 - 1000 copies >1000 copies >10000 copies

How do you intend to distribute DB2 Express-C?

as a Download on CD on DVD Other: _____

How will the DB2 Express-C images be included with your product?

on the same media/download image as your product on a separate CD/DVD/zip/tar/image

Who are the targeted users of the package that will include DB2 Express-C?

End-users/customers ISVs/Business Partners In-house/employees Students

Please tell IBM about the intended distribution of **WAS CE** (please check all applicable):

Which Version(s) and Release(s) of WAS CE do you intend to distribute? _____

For which Operating System platforms do you intend to distribute WAS CE?

Windows 32-bit (x86) Windows 64-bit (x86-64) Solaris 32 bit (Sparc) AIX 32-bit (PPC)

Linux 32-bit (x86) Linux 64-bit (x86-64) Linux 32-bit (PPC)

How many copies of WAS CE do you intend to distribute?

< 100 copies 100 - 1000 copies >1000 copies >10000 copies

IBM DB2 Express-C and/or WAS CE Distribution Request Form

How do you intend to distribute WAS CE?

as a Download on CD on DVD [Other: _____

How will the WAS CE images be included with your product?

on the same media/download image as your product on a separate CD/DVD/zip/tar/image

Who are the targeted users of the package that will include WAS CE?

End-users/customers ISVs/Business Partners In-house/employees Students

Additional Information:

Do you currently distribute any other database or application server software with your Product?

Yes No

If yes, provide database and application server name(s):

Would you like someone from IBM to contact you or send you information with additional details about either DB2 Express-C or WAS CE and related partnering benefits? ...

Yes No

Do you currently have an IBM Representative? Yes No

If yes, specify Name: _____ Email/Phone: _____

Please list any other relevant details that may assist IBM in reviewing this application:

Please provide complete contact information in the boxes below. By completing this form and providing IBM with information on behalf of other individuals in your organization, you certify that you have confirmed that such individuals agree that their contact information may be provided to IBM on this form.

Administrative Contact (Required; No Post Office Boxes):

Contact Name:		
Job Title:	Company:	
Street Address:		
City:	State/Province:	ZIP/Postal Code:
Country:	Phone:	Fax:
E-mail Address:		

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Technical/Backup Contact (Strongly Recommended):

Contact Name:		
Job Title:	Company:	
Street Address:		
City:	State/Province:	ZIP/Postal Code:
Country:	Phone:	Fax:
E-mail Address:		

The information in this form may be used to provide you with information about other offerings. To receive this information via e-mail or fax, check the first box below. Alternatively, if you would prefer not to receive such information by any means, check the second box.

Please use e-mail or fax to send me information about other offerings.

Please do not use this data to send me information about other offerings

Entity agrees to allow International Business Machines Corporation and its subsidiaries to store and use Entity's business contact information, including without limitation, names, business phone numbers and business e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors acting on IBM's behalf, IBM Business Partners who promote, market and support certain IBM products and services, and assignees of International Business Machines Corporation and its subsidiaries, for uses consistent with our business relationship.

BY SIGNING BELOW, ENTITY REPRESENTS AND WARRANTS (A) THAT IT ACCEPTS THE TERMS AND CONDITIONS OF THE DISTRIBUTION AGREEMENT FOR IBM DB2 EXPRESS-C AND/OR WAS CE, ATTACHED TO THIS FORM; AND (B) THE REPRESENTATIVE SIGNING BELOW ON BEHALF OF ENTITY HAS THE FULL POWER AND AUTHORITY TO BIND ENTITY TO THESE TERMS AND CONDITIONS.

Signature of authorized representative of Entity

Date

Printed Name

Title

Distribution Agreement for IBM DB2 Express-C and WAS CE

This Distribution Agreement for IBM DB2 Express-C and WAS CE (“**Agreement**”) is between International Business Machines Corporation (“**IBM**”) and the party identified as Entity in the IBM DB2 Express-C and WAS CE Distribution Authorization Letter (“**Authorization Letter**”), and sets out the terms and conditions under which Entity may distribute the Program, as defined below.

1 DEFINITIONS

1.1 “**Program**” means the generally-available version of IBM DB2 Express-C and WAS CE identified in the Authorization Letter, including the original and all whole or partial copies, and including the following: (a) machine-readable instructions and data; (b) components; (c) audio-visual content (such as images, text, recordings, or pictures); (d) related licensed materials; and (e) license use documents or keys, and documentation.

1.2 “**Customer Product Offering**” means the combination of the Program and Entity’s proprietary offering identified in the Authorization Letter.

1.3 “**Distributor**” means any third party that Entity uses for distribution of Customer Product Offerings that agrees to be bound by the rights, restrictions and obligations set out in this Agreement.

1.4 “**End User**” means a third party that acquires the Customer Product Offering from Entity or Distributor.

1.5 “**Affiliates**” means entities that control, are controlled by, or are under common control with, a party to this Agreement.

2 LICENSE, RESTRICTIONS AND OBLIGATIONS

2.1 The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold. Ownership of the copyrights, patents, and any other intellectual property rights in the Program shall remain at all times with IBM and/or its suppliers.

2.2 IBM grants Entity a non-exclusive, royalty-free, non-transferable, non-assignable, world-wide, license to make copies and distribute the Program to End Users directly or through Distributors, provided that the Program may only be distributed in its entirety and only as part of the Customer Product Offering.

2.3 Other than as expressly provided in this Agreement, (a) IBM does not grant Entity, Distributors or End Users any license under IBM’s patents or other intellectual property; and (b) Entity, Distributors and End Users may only use the Program in accordance with the terms and conditions of the International License Agreement for Non-Warranted Programs that accompanies the Program.

2.4 Entity agrees that (a) any goodwill attaching to IBM’s trademarks and trade names as a result of such use belongs to IBM; (b) it recognizes IBM’s sole ownership and title to all IBM trademarks; (c) it will co-operate with IBM to facilitate IBM’s control of its trademarks; and (d) it will not register or use any trademark that is confusingly similar to any of IBM’s trademarks.

3 WARRANTY

3.1 SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY. THE EXCLUSION ALSO APPLIES TO ANY OF IBM’S DEVELOPERS AND SUPPLIERS. IBM DOES NOT PROVIDE TECHNICAL SUPPORT, UNLESS IBM SPECIFIES OTHERWISE.

3.2 Entity represents and warrants that (a) Entity will not make any representations or warranties about the Program on behalf of IBM; (b) Entity will reproduce copyright notices and any other legends of ownership on the Program; (c) Entity will notify Distributors and End Users of the Customer Product Offering that the

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Program is licensed for use by End Users under the terms and conditions of the International License Agreement for Non-Warranted Programs that accompanies the Program; and (d) Entity will use IBM trademarks according to IBM trademark guidelines located at <http://www.ibm.com/legal/copytrade.shtml>.

4 LIMITATION OF LIABILITY

4.1 Circumstances may arise where, because of a default on IBM's part or other liability, Entity is entitled to recover damages from IBM. In each such instance, regardless of the basis on which Entity may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than (a) damages for bodily injury (including death) and damage to real property and tangible personal property; and (b) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim. This limitation of liability also applies to IBM's developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

4.2 UNDER NO CIRCUMSTANCES IS IBM, ITS DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: (A) LOSS OF, OR DAMAGE TO, DATA; (B) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR (C) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO ENTITY.

5 INDEMNIFICATION

5.1 Entity agrees, at Entity's expense, to defend and hold IBM harmless against any third party claim based on or arising from Entity's or Distributor's use of the Program with the Customer Product Offering. Entity agrees to pay all costs, damages and reasonable attorney's fees that a court finally awards as a result of such claim.

5.2 This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against Entity or Distributor except, as permitted by the Limitation of Liability section above.

6 TERM AND TERMINATION

6.1 This Agreement shall become effective as of the date of the Authorization Letter and shall expire on the License Expiration Date indicated in the Authorization Letter, unless terminated earlier as provided in this Agreement, or extended by written agreement.

6.2 IBM may terminate this Agreement upon written notice to Entity at any time if Entity or Distributors breach this Agreement.

6.3 IBM may terminate this Agreement for any reason upon thirty (30) days written notice to Entity.

6.4 Upon expiration or termination of this Agreement for any reason, Entity shall immediately cease distribution of the Program by Entity and by Distributors.

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7 GENERAL

7.1 All information exchanged between IBM and Entity is non-confidential, unless IBM and Entity provide such information under the terms of a separate and signed confidentiality agreement.

7.2 The rights and obligations of this Agreement which by their nature extend beyond its termination shall remain in effect until fulfilled and apply to respective successors and assignees.

7.3 In the event that any provision of this Agreement is held to be invalid or unenforceable the remaining provisions of this Agreement remain in full force and effect.

7.4 U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

7.5 The parties have agreed that this Agreement and all documents relating to this Agreement be drawn up in English. Les parties ont demandé que ce contrat ainsi que tous les documents qui s'y rattachent soient réédigées en anglais.

7.6 If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then Entity agrees to pay the amount specified or supply exemption documentation. Entity is responsible for any personal property taxes for the Program from the date that Entity acquires it.

7.7 Entity agrees to comply with all applicable export and import laws and regulations. Entity shall not, nor shall Entity authorize or permit Entity's employees or Distributors to, export or re-export the Program to any country specified as a prohibited destination in applicable federal, state and local laws, regulations and ordinances, including Regulations of the U.S. Department of Commerce and/or the U.S. State Department, without first obtaining any requisite U.S. government approval.

7.8 Neither Entity nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

7.9 Neither Entity nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

7.10 The laws of the State of New York govern this Agreement. Both parties agree to waive any right to a trial by jury for the resolution of any dispute with respect to this Agreement. Neither party will bring a legal action against the other more than two years after events giving rise to the cause of action were discovered. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

7.11 IBM and Entity agrees that (a) each party is an independent contractor and neither party is a legal representative or agent of the other; (b) each party is free to establish its own prices and to enter into similar agreements with other parties; (c) each party is under no obligation that is inconsistent with this Agreement; and (d) failure by one party to insist on strict performance or to exercise a right when entitled does not prevent the other party from doing so at a later time, either in relation to that default or any subsequent one.

7.12 Entity agrees that IBM may independently develop or acquire materials that are competitive with Entity's products or offerings or make similar arrangements with other parties.

7.13 IBM may assign its rights or delegate its responsibilities under this Agreement to its Affiliates.

7.14 Changes to this Agreement are only valid if agreed to by the parties in writing.

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7.15 The headings in this Agreement are for reference only and do not affect the meaning or interpretation of the Agreement.

7.16 This Agreement is the complete and exclusive statement of the agreement between the parties relating to this subject and supersedes all prior proposals or agreements, oral or written, and all other communications between the parties relating to this subject.

7.17 The parties acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.