

Service Description

IBM Digital Twin Exchange Provider Application

This Service Description describes the Cloud Service. The applicable order documents provide pricing and additional details about Client's order.

1. Cloud Service

The IBM Digital Twin Exchange is an online marketplace hosted by IBM, where Client, IBM and various third parties may offer their Digital Twin assets for sale to customers.

1.1 Offerings

The Client may select from the following available offerings.

1.1.1 IBM Digital Twin Exchange Provider Application

The Cloud Service provides an e-commerce platform through which Clients may upload, list and manage digital content to offer and sell to customers.

The Cloud Service includes:

- the ability to upload, price, publish and manage digital virtual content to the IBM Digital Twin Exchange.
- user interfaces for viewing order details and product views.
- the ability to respond to customer requests.

2. Data Processing and Protection Data Sheets

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the Cloud Services and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies to personal data contained in Content, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=E609ABF082F611E9BFD5252BC35BF06E>

3. Service Levels and Technical Support

3.1 Service Level Agreement

Not Applicable.

3.2 Technical Support

Technical support for the Cloud Service, including support contact details, severity levels, support hours of availability, response times, and other support information and processes, is found by selecting the Cloud Service in the IBM support guide available at <https://www.ibm.com/support/home/pages/support-guide/>.

4. Charges

4.1 Charge Metrics

The charge metric(s) for the Cloud Service are specified in the Transaction Document.

The following charge metrics apply to this Cloud Service:

- Access is the right to access administrative functionality of the Cloud Service.

5. Additional Terms

For Cloud Service Agreements (or equivalent base cloud agreements) executed prior to January 1, 2019, the terms available at <https://www.ibm.com/acs> apply.

5.1 Related Agreement

When Client agrees to the IBM terms, Client also agrees to the IBM Digital Twin Exchange Provider Agreement attached to this Service Description. For the purpose of the IBM Digital Twin Exchange Provider Agreement, IBM is referred to as IBM, Client is referred to as Provider, and Cloud Service is referred to as IBM Exchange.

IBM Digital Twin Exchange Provider Agreement

By accessing, browsing, clicking on an "Accept" button, or otherwise using the IBM Digital Twin Exchange Platform, Provider agrees to the terms of this Agreement. If you are accepting these terms on behalf of Provider, you represent and warrant that you have full authority to bind Provider to these terms. If you do not agree to these terms, do not access, browse, or click on an "Accept" button.

This Digital Twin Exchange Provider Agreement (the "Agreement") sets forth the terms and conditions under which Provider may offer one or more Digital Twins through the IBM Digital Twin Exchange ("IBM Exchange").

1. Agreement Structure

The complete agreement governing Provider's Digital Twin(s) in the IBM Exchange consists of this Agreement, and any applicable attachments or addenda hereto. This Agreement governs all Digital Twins offered by Provider in the IBM Exchange. This Agreement and applicable attachments supersede any prior agreements, discussions or representations regarding Provider's participation in an Exchange.

2. Definitions

Account Data – information that a Provider gives to IBM to enable Provider's use of the IBM Exchange or information that IBM collects using tracking technologies, such as cookies and web beacons related to the Provider's use of the IBM Exchange. Account Data does not include Business Contact Information (BCI) or personal data that IBM processes as a processor or sub-processor.

Affiliate – any entity that Controls, is Controlled by, or is under common Control with, a party to this Agreement. "Control" and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of at least fifty percent (50%) of the aggregate of all voting equity interests in an entity; (b) the right to direct its affairs; and/or (c) the right to control the composition of its board of directors or equivalent body.

Business Contact Information – information including name, business telephone, address, email and user IDs that a provider obtains or requires in order to enable legitimate business communications with Provider.

Customer – an individual or enterprise end user with an IBM Exchange account that purchases, uses, or otherwise accesses a Digital Twin listed on the IBM Exchange.

Customer Information – any data or information collected by Provider through the IBM Exchange or provided to Provider by IBM about Customers who have purchased or accessed a Digital Twin, including contact information, transaction history or Digital Twin usage information. Customer Information does not include information received by Provider directly from a Customer or otherwise relating to a Customer who has contracted with Provider directly not in connection with this Agreement.

Download Period – the ninety (90) day period, beginning on the date of Customer's purchase of the Digital Twin, during which IBM shall make such purchased Digital Twin available in the IBM Exchange for Customer download.

Error – a) any mistake, problem or defect ("bug") that causes a Digital Twin to malfunction or fail to meet its specifications; or b) any incorrect or incomplete statement or diagram in the related documentation that causes a Digital Twin to be materially inaccurate or inadequate.

IBM Exchange – the Internet environment hosted by or on behalf of IBM that includes: (i) the catalog of Digital Twins from IBM and Providers that are available to Customers to acquire and use, available at <https://www.ibm.com/Exchange/cloud/us/en-us?lnk=mp> or a successor url; and (ii) associated tools provided by IBM such as Integration APIs.

Integration APIs – documented technical programming interfaces made available by IBM, including APIs for user management, provisioning, upgrade, downgrade, import and sync, or APIs for integrating with other marketplaces or systems.

Net Billing – the amount invoiced or charged by IBM or an IBM Affiliate calculated using applicable discounts, refunds, offsets and other adjustments, exclusive of applicable Taxes on the Product or the Customer's payments to IBM or an IBM Affiliate.

Digital Twin – a virtual model of a process, product or service made available by Provider electronically to Customers in the IBM Exchange.

Digital Twin Fees – the fees, if any, determined by the Provider in its sole discretion, associated with the use of a Digital Twin by a Customer.

Provider – the non-IBM party to this Agreement who has accepted the terms of this Agreement and makes its Digital Twin(s) available in the IBM Exchange.

Provider Fees – the fees payable by IBM to Provider under this Agreement, as set forth in Section 7.2 of this Agreement.

Provider Material – Provider's trademarks, Digital Twin, and Digital Twin listing information and content, and other promotional material, documentation, and other information related to the Digital Twin.

Digital Twin Listing – the page within IBM Exchange that describes Provider's Digital Twin and related content, including for example, Provider Material, documentation, pricing and license terms, which is created and managed using the IBM Exchange onboarding tools.

Support – Digital Twin maintenance, updates, upgrades, technical support and service provided by Provider to a Customer when a possible Error or other issue is identified in Provider's Digital Twin. Support also includes resolving Customer questions regarding the Digital Twin(s).

Support Policies – the technical support and customer service mechanisms, criteria and processes that Provider must adhere to for each Digital Twin, found by selecting the Cloud Service in the IBM support guide available at <https://www.ibm.com/support/home/pages/support-guide/>.

Taxes – any and all applicable taxes, charges, fees, levies or other assessments imposed or collected by any governmental entity worldwide or any political subdivision thereof and however designated or levied upon or with respect to the transactions and/or payments to be made under or in connection with this Agreement, including without limitation sales, use, transfer, goods and services or value added tax or any other duties or fees; exclusive, however, of any taxes imposed upon the net income or capital of the Provider and any taxes in lieu of such net income taxes and any other taxes which are to be borne by the Provider under law.

3. Digital Twin and Digital Twin Listings

3.1 Digital Twin Criteria

Each Digital Twin must meet the following criteria in order to be published in the IBM Exchange:

- a. Digital Twins and Digital Twin listings shall be at all times in compliance with all applicable legal requirements in all countries where the IBM Exchange is available, including without limitation the European General Data Protection Regulation (EU/2016/679) ("GDPR");
- b. Digital Twin listings made available on the IBM Exchange must not refer to or promote IBM competitors.
- c. Digital Twins must be offered to Customers on terms and conditions (including but not limited to Digital Twin Fees) at least as favorable to the same Digital Twin(s) on other online sales or distribution channels through which Provider provides standard offers for content substantially similar to the Digital Twin, including such channels owned and operated by IBM.
- d. Digital Twin listings must include a link(s) to the end user terms of use (for example, terms of service or an end user license agreement) and privacy policy for the Digital Twin;
- e. The Digital Twin API library (if applicable) is exposed to Customers;
- f. Digital Twins cannot be dependent upon any IBM offering that has been withdrawn from support; and
- g. As the IBM Exchange expands to include local geographic communities, there may be additional requirements and selection criteria that Digital Twins will need to meet in order to participate in such geographic community. All geographic communities require Digital Twins to be sold to Customers in local currency and local language.

3.2 Digital Twin Listing and Publication

Provider will work with IBM to publish its Digital Twin listing within ninety (90) days of entering into this Agreement using the tools and process provided within the IBM Exchange. Provider is responsible for all

content it uploads into the IBM Exchange, including any Provider Material, which comprises the Digital Twin listing. Provider shall obtain all necessary licenses and consents needed to create and publish the Digital Twin listing in the IBM Exchange.

Notwithstanding the foregoing, IBM has the right but not the obligation to review and approve the Digital Twin, Digital Twin listing and integration compliance before such Digital Twin is made available to Customers. IBM's review, approval, and/or publication of a Digital Twin listing will not relieve Provider of responsibility for: (i) developing Digital Twins that are safe, free of defects in design and operation, (ii) compliance with applicable laws and regulations, or (iii) any documentation, Support, or warranty of the Digital Twin.

IBM may require updates or make changes to the Digital Twin listing before publishing the Digital Twin listing to the IBM Exchange as necessary to maintain overall consistency and integrity of the Exchange. IBM will notify Provider of any changes required to the Digital Twin listing if the Digital Twin listing is already published in the IBM Exchange. If Provider does not accept IBM's proposed changes to the Digital Twin listing, Provider may choose to withdraw the Digital Twin listing from the IBM Exchange as set forth in Section 10 of this Agreement.

3.3 End User Terms and Privacy Policy

Each Digital Twin listing will include a copy of or a link to the terms of use or end user license agreement applicable to the Digital Twin, which Customer must accept before purchasing, using or accessing a Digital Twin. In addition, IBM will present a copy of or a link to the applicable terms of use or end user license agreement on the Digital Twin checkout page. All licenses or terms of use governing the Digital Twin are directly between the Customer and Provider. IBM is not a party to such license or terms of use; however, IBM reserves the right in its sole discretion to review Provider's terms of use or end user license agreement and suspend or remove the Digital Twin listing if IBM deems such terms of use or end user license agreement to be inadequate.

At a minimum, the terms of use or end user license agreements will grant Customers the right to download and use Provider's Digital Twin; set forth Provider's security and privacy policies; not include billing and payment terms; and not impose any requirements or liability upon IBM.

Each Digital Twin listing must also include a link to Provider's privacy policy applicable to the Digital Twin. Provider's privacy policy must (i) inform Customers about any Customer Information Provider collects and how such Customer Information is used, stored, secured and disclosed, and (ii) describe the controls that Customers have over the use and sharing of their Customer Information and how they may access their data and information. IBM's privacy policies apply solely to Customers' use of the IBM Exchange and IBM products and will not apply to Customers' use of any of Provider's Digital Twins.

3.4 Digital Twin Ratings

IBM may implement mechanisms allowing Customers to rate and provide feedback about, a Digital Twin (including information about a Digital Twin that has been removed from the IBM Exchange), Provider or Provider's performance in connection with a Digital Twin and the IBM Exchange. IBM may make these ratings and feedback publicly available. Digital Twins or Provider may be subject to user ratings to which Provider may not agree. Provider may contact IBM if Provider has concerns regarding such ratings.

4. Responsibilities

4.1 Provider Responsibilities

Provider will:

- a. ensure that the Digital Twin meets the specifications described, and any statements made for references, Support capability, security, or other business or technical capabilities are accurate and supported by Provider;
- b. be responsible for development, making the Digital Twin available in a downloadable format in IBM Exchange, full testing, and management of the Digital Twin and all costs associated therewith;
- c. be responsible for providing Support to Customers as applicable;
- d. be responsible for creating and maintaining Provider Material regarding the Digital Twin. Provider will review and update, as necessary, all Digital Twin listings at least annually. If Provider does not

review and update its Digital Twin listing(s) annually, IBM may remove or suspend the applicable listing;

- e. securely manage i) any customer information received from Customers, ii) passwords for Customers and iii) any other access identifications or credentials used for its Digital Twin, and ensure that none of the foregoing is provided to IBM except as may be required for IBM to fulfill an order for a Digital Twin as described in this Agreement;
- f. maintain physical, technical and administrative security procedures and practices equal to or better than industry standards for ensuring protection of the Digital Twin, including content stored in the Digital Twin, from unauthorized access, destruction, use, modification or disclosure;
- g. not use the IBM Exchange for unlawful, obscene, offensive or fraudulent purpose or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights;
- h. not include any confidential information in the IBM Exchange or its Digital Twin listing;
- i. not include any personal data, as defined by GDPR, in the Digital Twin;
- j. not perform any technical security test, penetration test, or vulnerability scan of the IBM Exchange; and
- k. obtain all necessary consent to use, provide, store and process Provider Material, including but not limited to consent of data subjects necessary to comply with data privacy laws such as GDPR, if applicable, and will grant IBM permission to do the same.

4.2 IBM Responsibilities

IBM will:

- a. provide reasonable technical assistance as required for creating the Digital Twin listing in the IBM Exchange and, if applicable, integrating the Digital Twin with the Integration APIs;
- b. review and publish the Digital Twin listing to the IBM Exchange, as described in Section 3 of the Agreement;
- c. provide Customers with access to Provider's EULA for the Digital Twin at or before the time of purchase;
- d. for a Digital Twin, (i) enable Customers to purchase a license, subscription, or otherwise access the Digital Twin on the IBM Exchange; (ii) enable customers to access the purchased Digital Twin(s) for the Download Period; (iii) bill Customers for Digital Twin Fees, if any; (iv) collect Digital Twin Fees, if any, remitted from Customers for use of such Digital Twin; and (v) pay Provider the Provider Fees, if any, as described in Section 7.2 of this Agreement;
- e. provide notice to Provider if the terms and conditions of this Agreement change;
- f. provide physical access security for the IBM Exchange; and
- g. provide Customer access and authorization controls for the IBM Exchange.

5. Support

5.1 Overview

In the event IBM receives a support inquiry related to Provider's Material, IBM will resolve the issue, or contact the Provider through the contact method Provider specifies during onboarding. In the latter case, IBM will work with the Provider (and in some cases, the Provider and Customer) to resolve the inquiry.

Provider will comply with the requirements set forth in this Agreement and the Support Policies.

5.2 Provider Support Obligations

Provider is responsible for all Support for its Digital Twin, included as part of the Product Fees charged for the Digital Twin(s), for as long as the Digital Twin(s) is offered on IBM Exchange.

Provider will be responsible for receiving, handling, and resolving all Customer complaints about the Digital Twin, including complaints regarding completeness, accuracy, file format, features and function of

the Digital Twin, and any other Customer satisfaction issues for the Digital Twins. Provider shall respond to all Customer complaints and other inquiries as defined by the table in 5.3.

5.3 IBM Support Obligations

IBM will enable Customers to ask questions or report problems regarding the IBM Exchange platform functionality, including Customer's download of Provider's Digital Twin. IBM shall respond to all Customer complaints and other inquiries as defined by the following table.

Support Type	Activity Scope	Responsible Party
Product Support	Addresses complex issues that require deep knowledge of the Digital Twin. Resolution may take the form of completion of incomplete or unavailable Digital Twin, new file format for download, or the release of an update to the Digital Twin. Investigates non-trivial problems and concerns that require expertise in the Digital Twin, or in file formatting or download, and goes beyond available documentation. Resolution may take the form of advice or approaches to the use of the Digital Twin based on the agent's own experience, available documentation and forum conversations. Respond to trivial issues using well documented solutions.	Provider
General Support	General Support for problems/concerns/questions related to the performance of the Exchange, access to the content through the Exchange, or Exchange features and functions.	IBM
Triage	Examines a problem/concern/question to determine its complexity; then routes to Provider if applicable to the Digital Twin itself.	IBM

6. License Grants

6.1 License Grants to IBM

6.1.1 Right to Publish and Sell Digital Twin Listing and Use Provider Material

During the term of this Agreement, Provider grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non- transferrable, non-exclusive right and license to 1) take all actions necessary to publish its Digital Twin listing and all applicable Provider Material in the IBM Exchange, including testing to ensure proper upload of the Digital Twin listing in IBM Exchange; 2) use Provider Material anywhere within the IBM Exchange; and 3) make non-material changes to the Digital Twin listing or Provider Material such as correcting typos, grammatical errors or broken urls.

6.1.2 License Grant for Digital Twins Only

During the term of this Agreement, Provider grants IBM a worldwide, royalty-free, fully-paid up, non-transferable, nonexclusive right to offer and sell Digital Twins to Customers through the IBM Exchange.

6.1.3 Intellectual Property Ownership

IBM acknowledges that the Digital Twin and Provider Material is solely the property of Provider and its licensors, and nothing in this Agreement confers upon IBM any intellectual property rights in the Digital Twin or Provider Material except as explicitly set forth herein.

6.2 License Grant to Provider

During the term of this Agreement, IBM grants Provider a worldwide, non-exclusive, paid-up right and license to access and use IBM Exchange interfaces and related documentation made available by IBM through the IBM Exchange for the sole purpose of managing Provider's Digital Twin listings, orders and communication into the IBM Exchange. Except as set forth in this Section, IBM and its licensors retain exclusive right, title and interest in and to (a) the IBM Exchange; (b) all visual interfaces, text, graphics and other content included on the IBM Exchange; (c) all underlying technology, software, data, and other materials that implement and/or operate the IBM Exchange (including Integration APIs if applicable); (d) any and all modifications and enhancements and derivative works made to (a) through (d); and (e) any and all intellectual property rights in or related to (a) through (d).

7. Fees

7.1 Digital Twin Fees

Provider will determine the Digital Twin Fees excluding applicable Taxes in the IBM Exchange. In jurisdictions where IBM or an IBM Affiliate is responsible under applicable laws for reporting and remitting Taxes to tax authorities on the provision of Digital Twins to Customers, IBM will determine the rate of Taxes to be added to the Digital Twin Fees and charged to the Customer. In jurisdictions where it is the Provider's responsibility to remit Taxes to tax authorities on the provision of Digital Twins to Customers, Provider must notify IBM of the applicable Taxes to be added to the Digital Twin Fees to be charged to Customers.

IBM or an IBM Affiliate will be responsible for issuing billing documentation to Customers for the Digital Twin Fees and collecting any payment from Customers, including all applicable Taxes in countries where IBM or an IBM Affiliate is responsible for reporting and remitting Taxes to the tax authorities.

Provider may directly negotiate a Digital Twin Fee discount with a Customer, provided, however, that any sales resulting from such negotiations must be transacted through the IBM Exchange. In such circumstances, Provider shall provide Customer with a discount code for the Digital Twin Fee discount, which may be used by the Customer in the "checkout" process for the Customer's purchase.

7.2 Provider Fees

Payment of Provider Fees will be made within sixty (60) days after the close of each calendar month, unless the last day of the month falls on a weekend or holiday, in which case it will then be made by the next business day. All payments will be made in U.S. dollars.

Provider Fee payments will be 70% of the Net Billing of a Digital Twin for a given calendar month, less: i) any non-refundable and/or non-creditable Taxes withheld on or deducted from payments made by Customers to IBM; ii) any non-refundable and/or non-creditable Taxes applicable to, withheld on or deducted from payments or charges made by IBM Affiliates to the IBM entity responsible for paying the Provider Fee to the Provider; and (iii) any non-refundable and/or non-creditable Taxes applicable to, withheld on or deducted from payments between IBM Affiliates for use of the IBM Exchange related to this Agreement.

Provider Fees will be paid less adjustments and refunds due to IBM. If a Customer fails to pay all or a portion of the Digital Twin Fees due, IBM may adjust Provider Fees for the applicable month.

7.3 IBM Exchange Membership Fees

Provider shall pay an annual non-refundable membership fee to IBM for the opportunity to list its Digital Twins in the IBM Exchange. The IBM Exchange Membership fees shall be as listed in the applicable Transaction Document. Failure to pay such IBM Exchange Membership fee shall be deemed a material breach of this Agreement.

7.4 Refunds and Credits

IBM or an IBM Affiliate will be the contact for refunds, credits and billing disputes from Customers. IBM will discuss any such requests or disputes with Vendor, with the intent of IBM and Vendor making a mutual decision for resolving any requests or disputes; however, IBM reserves the right to make decisions regarding credits and refunds in accordance with its policies if the parties cannot reach mutual agreement.

If IBM or an IBM Affiliate provides a refund or credit to a Customer, IBM or such Affiliate will make appropriate adjustments to the Provider Fees and any applicable Tax payments to reflect the credit or refund.

8. Taxes

8.1 Provider Fees Not Inclusive of Tax

The Provider Fees do not include sales, use, value added and goods and service taxes (collectively, "Indirect Taxes"). If Provider is legally obligated to collect Indirect Taxes, Provider must state each applicable Tax as a separate line item on an invoice to IBM and as applicable, issue a valid tax invoice to IBM.

8.2 Tax Payment

Subject to IBM's receipt of a valid tax invoice from Provider, IBM will pay Indirect Taxes separately on the Provider Fees, unless IBM issues Provider with a valid Tax exemption certificate.

8.3 Tax Withholding

If IBM is obligated to withhold any Taxes from the Provider Fees, IBM will make the payments net of the withheld amounts. Upon request, IBM will provide Provider with sufficient evidence of such Tax payments withheld on behalf of Provider to allow Provider to apply for a refund of the withheld Tax if available.

8.4 Tax Responsibilities

Where applicable laws require Provider to report and/or remit Taxes in connection with any transaction linked to this Agreement, including without limitation Provider's Digital Twin listing, sales of Provider's Digital Twin on the IBM Exchange, or Provider Fees remitted to Provider by IBM, Provider is responsible for the payment and reporting of Taxes. Except where applicable laws require IBM to report and/or remit Taxes, IBM is not responsible for determining whether any Taxes apply to any transaction or for remitting Taxes to any taxing authority or for reporting any information to any taxing authority with respect to any transaction. Where applicable laws require IBM to charge, report and/or remit Taxes, IBM will collect, report and pay Taxes and issue a compliant tax invoice to Customers.

9. Compliance

9.1 Export Compliance

Provider will comply with applicable import, export control and economic sanction laws and regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Provider will not export, directly or indirectly, any technology, software or commodities provided by IBM under this Agreement to any prohibited destination or for any prohibited end use. Provider will include the export control classification number (ECCN) for the Digital Twin in the IBM Exchange onboarding tooling. Provider acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of the IBM Exchange. Upon request, Provider will provide to IBM the classification of the Product under the U.S. Export Administration Regulations and reasonably work with IBM to ensure compliance with applicable export controls based on this classification.

9.2 Compliance with Laws

Provider and IBM will each comply with all applicable laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act and the applicable anti-bribery laws and laws governing transactions with government and public entities, antitrust and competition laws, applicable insider trading, securities, and financial reporting laws, laws governing consumer transactions, and laws regarding data privacy, including GDPR if applicable.

9.3 Ethical Dealings

Provider will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Provider and its Affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of IBM or its Affiliates, offer, promise or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel or other value for a government employee or his/her family members or (c) any payments or gifts (of money or anything of value) to anyone. IBM shall not reimburse Provider for any such political contributions, payments or gifts.

10. Data Protection

10.1 Business Contact Information

IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process Business Contact Information (BCI) of Provider, its personnel and authorized

users for business dealings with them. Where notice to or consent by the individuals is required for such processing, Provider will notify and obtain consent.

10.2 Account Data

IBM and its affiliates, and their contractors and sub-processors, may use Account Data for example to enable Digital Twin features, administer use, personalize experience, and otherwise support or improve use of the IBM Exchange. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> provides additional details.

10.3 Processing of Personal Data on Provider's behalf

If and to the extent (a) IBM is processing personal data on behalf of Provider and (b) the GDPR applies to such processing of personal data, IBM's Data Processing Addendum (DPA) at <http://www.ibm.com/dpa> and the applicable DPA Exhibit at <https://ibm.biz/ProviderDPAExhibit> apply and supplement the Agreement. References in the DPA to "Client" shall mean "Provider" for processing performed under this Agreement.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the IBM Exchange. IBM may transfer Provider's personal data across country borders including outside the European Economic Area (EEA).

10.4 Processing of personal data on IBM's behalf

If and to the extent Provider is processing personal data on behalf of IBM in connection with the subject of this Agreement, such processing will be governed by the terms of the Provider Data Processing Agreement, separately agreed to between the parties.

10.5 Use of Customer Information

Provider will use Customer Information only to communicate with Customers regarding the provision or operation of the Digital Twin, including communications about Support, feedback requests, changes to a license agreement or terms of use, or training.

Provider may not use Customers Information for any other purpose without Customer's explicit consent provided directly to Provider. In particular, Provider may not:

- a. contact Customer for promotional or marketing purposes unless Customer has provided valid consent to receiving promotional or marketing communications as may be required under applicable privacy laws or regulations;
- b. disclose Customer Information to any third party, except as may be necessary to perform obligations under this Agreement provided Provider ensures every recipient uses the information only for that purpose and complies with any applicable restrictions; or
- c. use Customer Information to attempt to sell directly to Customer outside IBM Exchange or to influence Customer to make an alternate purchase outside IBM Exchange.

This Section 10.5 does not prevent Provider from using other Customer contact information that Provider acquires independently from IBM Exchange for any purpose, even if that information is identical to Customer Information, as long as Provider does not target communications on the basis of the intended recipient being an IBM Exchange Customer.

11. Term and Termination

11.1 Term

The term of this Agreement is effective upon acceptance by the Provider and will remain in effect for a twelve (12) month period. After such initial 12-month period, the Agreement shall automatically renew for consecutive 12-month periods, unless terminated earlier as described below.

11.2 Termination

- a. Either party may terminate this Agreement for any reason or no reason with ninety (90) days written notice to the other party.
- b. Either party may terminate this Agreement for the other party's breach of this Agreement upon thirty (30) days written notice to the breaching party, provided the breaching party is unable to cure such breach within thirty (30) days.

11.3 Effects of Termination

- a. IBM will remove Provider's Digital Twin(s) from IBM Exchange upon Agreement termination.
- b. Notwithstanding (a), Customers who have purchased the Provider's Digital Twins may continue to download the Digital Twin for the duration of their Download Period.
- c. Provider will continue to provide Support to Customers for the Digital Twin(s), until expiration of the term of Customers' use of the Digital Twin according to the end user license agreement between the Provider and Customer.
- d. In order to satisfy sections b) and c) this Agreement will survive until the expiration of any applicable Download Period as described in b) and until IBM has paid Provider Fees for Digital Twin purchases made prior to the termination of the Agreement.

11.4 Withdrawal of Products

- a. If Provider announces that it will withdraw a Digital Twin from general availability, Provider will notify IBM at least ninety (90) days before the withdrawal date. IBM will notify Customers that Digital Twin will not be available for purchase after the date specified by Provider. Such withdrawn Digital Twins will remain available to Customers during the applicable Download Period.
- b. Existing Customers may continue to use the Digital Twin, and Provider will continue to provide Support for the Digital Twin until expiration of the term of Customers' subscriptions to the Digital Twin.

12. Suspension and Removal

- a. IBM may immediately suspend (i.e. temporarily "hide" the Digital Twin listing from public view) or remove a Digital Twin listing from the IBM Exchange at any time in IBM's sole discretion. If IBM suspends or removes the Digital Twin listing pursuant to this paragraph, IBM shall provide Provider with written notice and explanation of its suspension or removal.
- b. If IBM suspends the Digital Twin listing due to Provider's breach of this Agreement, misappropriation of IBM or third party intellectual property or violation of applicable law or regulation, Provider shall be provided with thirty (30) days' notice to resolve or cure any such breach, misappropriation, or violation. At the end of such thirty (30) day period, IBM shall either (i) restore the Digital Twin listing if such breach, misappropriation or violation is resolved to IBM's satisfaction; or (ii) remove the Digital Twin listing from the IBM Exchange, provided that if such Digital Twin listing is removed by IBM, IBM shall provide Provider with written notice and explanation of its removal.
- c. Provider may request that IBM suspend or remove Provider's Digital Twin listing from the IBM Exchange upon ninety (90) days prior written notice and explanation to IBM. A suspension or removal of a particular Digital Twin at Provider's request will not automatically terminate this Agreement.

13. Confidentiality

Unless the parties mutually agree to exchange confidential information under a separate confidentiality agreement, all information they exchange is non-confidential, including any content processed by or uploaded to the IBM Exchange. Neither party shall disclose the terms of this Agreement to any third party without the other party's prior written consent, except to the extent necessary to establish each party's rights hereunder, or, as required by applicable law or regulations.

14. Representations and Warranties

Provider represents and warrants that:

- a. Provider has the necessary rights in and to the Digital Twin (including associated marks and names) to grant IBM the rights specified in this Agreement, and to grant Customers the rights specified in the Provider's terms of use or end user license agreement, as applicable;
- b. the Digital Twin conforms to its specifications;
- c. the Digital Twin is safe for use with, and will comply with, the warranties and requirements in this Agreement;
- d. any written representations made, or information provided, by Provider to IBM or Customers is true and accurate;
- e. neither the Digital Twin nor the Provider Material infringes any privacy, intellectual property or other right of a third party;
- f. the Digital Twin does not contain harmful code; and
- g. Provider has complied with any and all requirements relating to any and all third party or open source software included in the Digital Twin, including all licensing agreements applicable to such third party or open source code.

Except as specifically provided in this Agreement, neither party, nor their respective suppliers, makes any warranties, express or implied, including, but not limited to, the implied warranties of merchantability, title, non-infringement, and fitness for a particular purpose. Neither IBM nor its suppliers make any warranties that any particular results will be derived from the use of the IBM Exchange or any deliverables or services provided under this Agreement.

15. Indemnification

Provider will defend, indemnify and hold IBM and its Affiliates harmless with respect to any third party claims (a) related to its Digital Twin(s) or Provider Material or (b) related to or arising from Provider's breach of Sections of 3.1(a) and 10 of this Agreement, in each case provided IBM promptly (i) notifies Provider in writing of the claim; (ii) supplies information reasonably requested by Provider; and (iii) allows Provider to control and reasonably cooperates in the defense and settlement, including mitigation efforts at Provider's expense; however, IBM may participate in the proceedings at its option and expense.

Provider will defend, indemnify, and hold IBM and its Affiliates harmless with respect to third party claims concerning payment of any Taxes imposed in connection with any transaction, and with respect to any fine imposed by a government authority as a result of Provider's failure to remit or report any such Taxes in connection with Digital Twins, including joint and several liability provisions that result in tax assessments being levied on IBM and its Affiliates as a result of an act or omission by Provider.

16. Limitation of Liability and Exclusions

16.1 Limitation of Liability

Except as expressly set forth in Section 16.2 of this Agreement, each party's entire liability for all claims in the aggregate arising from or in connection to the IBM Exchange, a Digital Twin listing, or this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property; and 2) other actual direct damages up to \$10,000.00, regardless of the basis of the claim. This limit applies collectively to each party and each party's Affiliates and contractors. Neither party, nor its suppliers, will be liable for special, incidental, exemplary, indirect or economic consequential damages; lost profits, business, revenue, goodwill, anticipated savings; loss of, or damage to, data (including personal data); or network failure or interruption.

Provider understands and agrees IBM has no liability to provider for misuse by Customers of Digital Twins that are made available as part of the IBM Exchange.

16.2 Damages Excluded from Limitation of Liability

The foregoing limitations and disclaimers of liability shall not apply to (1) the liability of either party for damages associated with its infringement or violation of the intellectual property rights of the other party or its licensors; or (2) claims arising under Section 14 of this Agreement.

17. Marketing Rights

Subject to the terms and conditions of this Agreement, Provider grants IBM and its Affiliates a worldwide, royalty free, fully-paid up, non-transferrable, non-exclusive right and license to use Provider's name and logo, and Digital Twin name and/or logo in the parties' web sites, external presentations, advertising, and marketing materials for the IBM Exchange. IBM will not display Provider's name and logo in an inaccurate, derogatory, confusing or misleading manner, and Provider may require IBM to correct or remove inappropriate uses of their name and logo. Except as expressly provided herein, IBM does not acquire any rights in Provider's name or logo.

For so long as this Agreement remains in effect, Provider may reference the fact that Provider is a Provider in press releases and promotional materials in support of the Digital Twin, and for general promotion purposes.

Provider will not reference IBM's name in an inaccurate, derogatory, confusing or misleading manner. Provider may not use IBM trademarks without the express written consent of IBM.

Neither party shall make any statements in connection with the use of either party's name and/or logo to suggest, state or imply that either party warrants the other's Digital Twins or is the source of, uses, or services the other's Digital Twins.

18. General

- a. Each party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
- b. In the event that IBM receives a notice of copyright infringement concerning the Digital Twins, where the notice conforms to the then current requirements of the Digital Millennium Copyright Act (DMCA), IBM will immediately suspend the Digital Twins listing in the IBM Exchange. In the event IBM takes such action, Provider may provide a counter notice to IBM which conforms to the then current requirements of the DMCA and IBM will, in its sole discretion, restore the Digital Twins to the IBM Exchange. If IBM receives a notice of copyright infringement concerning the material a Customer stores in the Digital Twin, IBM will refer the notice to the Provider for action. IBM's current policy regarding the DMCA and its requirements can be found at <http://www.ibm.com/legal/us/en/dmca.html>. In the event the DMCA is amended, IBM will modify the referenced url to reflect such changes. In the event of a discrepancy between the IBM website and the DMCA, the DMCA will prevail. IBM disclaims all responsibility for lost profit and/or revenue during the period in which the Digital Twins are removed or suspended.
- c. The laws of the State of New York govern the rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to its conflict of law principles.
- d. Any notice required or permitted under this Agreement will be sent to the representatives set forth by both parties. IBM contact information will be listed in the IBM Exchange. Provider contact information will be included in the Digital Twin listing.
- e. If any term of this Agreement is found to be unenforceable in any respect, the validity of the remainder of the Agreement will be unaffected.
- f. A waiver of any right under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation under this Agreement will not be deemed a waiver of subsequent instances.
- g. Provider may not assign this Agreement, in whole or in part, without IBM's prior written consent, which shall not be unreasonably withheld. IBM may assign its rights or delegate or subcontract its duties under this Agreement to third parties or an IBM Affiliate without the prior written consent of Provider. Any unauthorized assignment of this Agreement is void.
- h. Any terms of this Agreement, which by their nature extend beyond the date this Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees.
- i. Neither party will bring a legal action against the other more than two years after the cause of action arose.

- j. This Agreement is nonexclusive. Neither party is a legal representative nor legal agent of the other. Neither party is legally a partner of the other, and neither party is an employee or franchisee of the other, nor does the Agreement create a joint venture between the parties.
- k. Either party may independently develop, acquire, and market products, materials, Digital Twins or services that may be competitive with (despite any similarity to) the other party's products, materials, Digital Twins or services, subject to the terms and conditions herein. Each party is free to enter into similar agreements with others and may offer to provide any Digital Twins and/or services to its customers without any obligation to the other party, subject to the terms of this Agreement.
- l. Neither party will assume nor create any obligations on behalf of the other or any representations or warranties about the other, other than those authorized. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is either party responsible for any third party claims against the other party except as specifically provided herein.
- m. Neither party is responsible for failure to fulfill obligations due to causes beyond its control.
- n. IBM may modify this Agreement at any time. A notice will be sent by email to Provider notifying Provider of the changes and describing any modifications made. Changes will not be retroactive. They will become effective, and will be deemed accepted by Provider, on the date specified in the notice, and for as long as any Digital Twin listing remains published on the IBM Exchange, Provider will be deemed to accept the new terms in accordance with the notice provided. If IBM makes material changes to the Agreement that Provider does not agree with, Provider may terminate the Agreement and remove Digital Twin listing(s) from the IBM Exchange in accordance with Section 11.2(a) of this Agreement.