

## ***itp-commerce SMAL Partner Program Agreement***

**itp commerce ltd.**, Stade de Suisse, Papiermühlestrasse 73, 3014 Berne, Switzerland  
(named ITPC in this contract) and you

---

---

*[please insert name of company, address, ZIP code, place, country]*

agree to the following terms for your participation in the itp-commerce Partner Program (the “program”).

**1. Scope.** This program is designed to help ITPC’s consulting partners deliver services based on ITPC software. Taking part in any ITPC program is always voluntary. Nothing in this agreement restricts you from supporting, promoting, distributing or using non-ITPC technology.

**2. Definitions.** In this agreement, “you” means the company that has entered into this agreement with us, and “we,” “us” or “ITPC” means itp commerce ltd. In addition, the following definitions apply:

2.1 “affiliate” means any legal entity that owns, is owned or is commonly owned by or with you or us. Own means holding or controlling greater than 50% of the shares, interests or assets of a legal entity.

2.2 “itp-commerce materials” means any ITPC technology (including software), services, information, materials and other benefits offered to you through the program.

2.3 “program guide” means the guide in *Exhibit* of this agreement and that is incorporated into and forms part of this agreement. The program guide includes, but is not limited to additional guidance and instruction about the program levels, program benefits, and any operational requirements.

2.4 “program levels” means the level of your participation in the program.

There are two program levels: (i) registered member level (requires registration only), and (ii) certified business partner level. The certified business partner level has additional requirements. Program levels and requirements are described more fully in the program guide (see Exhibit).

2.5 “program website” means the website you are currently accessing to review and accept this agreement, which is located on <http://www.itp-commerce.com>. The program website provides additional tools and information about the program, including the program guide.

### **3. Program.**

3.1 Enrollment. After you accept this agreement, we will advise you of our acceptance or non-acceptance.

3.2 Solutions competency. A solutions competency is special recognition given to partners for specific areas of expertise. The various solutions competencies and associated requirements are explained in the program guide.

### 3.3 Benefits.

- a. You will receive certain benefits under the program as described in the program guide. Benefits may vary by program level, solutions competency, and by country. Generally, benefits may include sales, marketing, training, technology, services and technology development programs.
- b. Program benefits may have additional terms, conditions, and licenses associated with them (hereinafter "additional terms"). Before using any program benefit, including ITPC technology, you must accept the additional terms. Your use of program benefits implies your acceptance of the additional terms, if any, and your use will be in accordance with those additional terms and this agreement. If you do not agree, you are not authorized to use the program benefit(s).

3.4 Services. Delivery of services (as described in the program guide) depends on your full and timely cooperation, as well as the accuracy and completeness of any information you provide. Services may include support services that are provided to you according to this agreement, unless a separate written agreement applies.

3.5 Support. We may offer support for new software or discontinue support for existing software. A list of our currently supported software is posted at <http://www.itp-commerce.com/>. There may be cases where we cannot effectively support your implementation of our software and we will notify you if we reach that conclusion. If you do not modify the implementation of the software to make it effectively supportable within 30 days after the notice, we will not be obligated to provide additional support for that implementation.

3.6 Program administration. We will administer the program through the program website. This site includes the program guide, tools to track your program membership, and program benefits. ITPC may contact you and send notice by telephone, fax and physical or electronic mail for the primary purpose of administering the program; providing information to you about the program; and inviting you to participate in surveys and research.

### 3.7 Program changes.

- a. We have the right to change or discontinue the program or any aspect of it. We will give you 30 days email or written notice of any substantive program change. However, we will give you 60 days email or written notice if we intend to discontinue the program.
- b. For all other changes, you are responsible for checking the program website regularly. When the program website changes, you will be bound by the changes as of the date the changes are posted but the changes will not apply retroactively.

### 3.8 Payment.

- a. If you qualify and enroll as a certified business partner, you agree to pay us the annual program fee and other applicable benefit fees. All sums are meant to be excluding Value Added Taxes (if applicable). The annual program fee and other applicable benefit fees may be amended from time to time.

- b. Payment must be done before any license keys or other software goods are shipped. For countries other than Switzerland or Germany payment can be done by Credit Card only using our payment service.

3.9 Advertising and publicity. We will request your permission if we plan to use your name or corporate logos or identity in advertisements or promotions relating to the program. You agree not to unreasonably withhold or delay your permission. If we do not receive your response within 30 days, lack of response will signify that, you have granted your permission.

#### **4. Intellectual Property.**

4.1 Limited trademark license. The "ITPC marks" include those trademarks, logos, symbols, and names. The ITPC marks are available to you only if requested by ITPC. As long as you meet the criteria, we grant to you a non-exclusive, non-transferable, limited, royalty-free license to use the applicable ITPC marks. You acknowledge and agree that:

- a. Itp commerce ltd. is the sole owner of the ITPC marks and the sole beneficiary of the goodwill associated with your use of the ITPC marks.
- b. You will not acquire any right, title or interest in the ITPC marks because of your use of the ITPC marks.
- c. You will not register, adopt or use any name, trademark, domain name or other designation that includes all or part of any ITPC mark, or any term that is confusingly similar to an ITPC mark, or a translation or transliteration of a ITPC mark.
- d. You may not alter, animate or distort the ITPC marks nor combine them with any other symbols, words, images or design elements.
- e. You may not use any of the ITPC marks or ITPC materials in connection with the transmission or distribution of unsolicited commercial email or in any manner that would violate local law or custom or conflict with our policies published through this program.
- f. You must maintain the quality of the solutions and services you offer in relation to the ITPC marks and the ITPC materials at a level commensurate with the quality of services you offered before the date of this agreement. The quality of your solutions and services must also meet or exceed standards of quality and performance generally accepted in the industry.
- g. You agree to correct any improper use of the ITPC marks and deficiencies in the quality of your solutions and services within a reasonable time upon receipt of notice from us.
- h. You agree not to use the ITPC marks once this agreement is terminated and to remove any ITPC marks from your website and any other publication material such as brochures, leaflets, etc. immediately upon termination of the agreement.

4.2 Referential use of trademarks. All partners (including registered members) of ITPC may use our corporate name, technology names and trademarks in plain text (but not logos, trade dress, designs or word marks in stylized form) to accurately identify and refer to ITPC and its technology and services, provided that such use is not likely to cause confusion about the source of your solutions and services or your relationship with ITPC.

4.3 Notices. You must not remove any copyright, trademark or patent notices contained in or on any ITPC materials. You must include our copyright notice on the labels for any tangible media containing licensed ITPC technology and on any documentation for licensed ITPC technology, including on-line documentation. You must use the appropriate trademark, licensed ITPC technology descriptor and trademark symbol (either “™” or “®”), and clearly indicate our (or our suppliers’) ownership of trademark(s) whenever a licensed ITPC technology name is first mentioned in any advertisement, brochure or in any other manner in connection with any licensed ITPC technology.

4.4 No technology transfer arrangement. This agreement does not create a “technology transfer” agreement, as defined by applicable law because (a) the technology (including any software) made available under this agreement is not an integrated part of a technology chain for production or management purposes and (b) the technology (including any software) will have its own technology license. You will not hold yourself out as our technology recipient and will not attempt to identify us as a technology provider under this agreement.

#### 4.5 Software or services benefits.

- a. Your right to use ITPC software or services offered to you under the program may be governed by a separate agreement or other use terms for the applicable software or service.
- b. You must not engage, or participate with any third party, in the unauthorized manufacture, duplication, delivery, transfer or use of counterfeit, pirated, unlicensed or illegal software or other ITPC materials and you must not otherwise infringe any of our intellectual property rights. You must reasonably cooperate with us and our affiliates in the investigation of counterfeit, pirated, unlicensed or illegal software and other ITPC materials. As soon as you become aware, you must report to us any suspected counterfeiting, piracy or other copyright infringement in computer programs, manuals, course material, marketing materials or other copyrighted materials owned by us and/or our licensors.
- c. The software licenses that you receive under the program may not be resold, transferred, or used except as expressly provided in this agreement (please see the program guide and program website for more details). You must acquire a sufficient number of ITPC software licenses through the program and our licensing programs to match (1) the quantities of the ITPC software you use and (2) the maximum number of users and/or devices that may access or use the ITPC software under your agreements with us or a reseller. To ensure compliance with this subsection, we may (a) contact you and (b) take action to ensure that you do not use more software than authorized by this agreement.
- d. The benefits you receive under the program, including software or services, are not intended for distribution to your customers. Your customers must acquire a sufficient number of ITPC licenses to match (1) the quantities of the licensed software you may provide to your customers under a separate agreement, and (2) the maximum number of users and/or devices that may access or use the licensed software under the customer’s license agreement with you or us. You will inform us of any known or suspected failure by a customer to possess sufficient numbers of ITPC licenses. You will inform us of any known or suspected violations by a customer of any ITPC license agreement.

#### 4.6 Reservation of rights. We reserve all rights not expressly granted in this agreement.

## **5. Program limitations, warranty, indemnification, and disclaimers and limitations of liability.**

5.1 Program Limitations and Warranty. We warrant that we will use reasonable care and skill to administer the program. However, your effort and resulting performance in the program are completely under your control. We do not guarantee your satisfaction with the program or your results. Except for loss and damage which cannot be limited or excluded under applicable law, (a) the ITPC materials we provide you are "AS IS," and are provided without any other warranties of any kind, and (b) **we disclaim on our own behalf and on behalf of our affiliates and suppliers all other representations, warranties, and conditions whether express, implied or statutory. This limitation includes, but is not limited to, title, non-infringement, merchantability, satisfactory condition or quality, merchantability, fitness for a particular purpose, accuracy, completeness, system integration, timeliness, or any implied warranty or conditions arising from course of dealing or usage of trade.** You must defend, indemnify and hold us harmless from any third-party claims, including, without limitation, reasonable attorney's fees, arising from your acts or omissions (including those of your agents) relating to your performance under this agreement. This limited warranty gives specific legal rights. You and we may have other rights which vary by jurisdiction.

5.2 Disclaimers and limitations of liability. **In the absence of fraud or gross negligence, neither party will be liable to the other for any loss (whether direct or indirect) of profits, data, business or anticipated savings. In addition, there is no liability for any other indirect, consequential, punitive, incidental or special damages arising out of or related to this agreement (whether for support services, termination or otherwise). The only remedy that the parties may have for any claim arising out of or related to this agreement (whether for support services, termination or otherwise) is to terminate this agreement. These terms apply regardless of the form or cause of action or the alleged basis of the claim (including negligence). This section does not apply in the case of fraud, gross negligence, intentional misconduct, death or personal injury caused by negligence, or to breaches of intellectual property rights, indemnification or confidentiality provisions of this agreement. This section is enforceable to the maximum extent permitted by law.** Yours and our total cumulative liability for loss or damage of any kind (including loss or damage caused by negligence) to the extent not excluded by this agreement is limited to 100% of the amount actually paid, and any amounts owed by you to us, during the then-current term of this agreement. Such liability is reduced to the extent that the non-liable party or its agents caused or contributed to the loss or damage.

5.3 Business purposes. You confirm that you are entering this agreement, and acquiring the services and program materials under it, for business purposes only. You agree that the provisions of any consumer protection legislation for the relevant jurisdiction will not apply to the extent that contracting out of such legislation is permitted by law.

5.4 Consumer rights. Nothing in this agreement is intended to limit the rights of a consumer, as may be defined by applicable law. To the extent necessary, this agreement is considered to be modified to reflect this intention. Consumers may have the benefit of certain rights or remedies which may not be excluded under applicable law. If applicable law gives you any implied terms, despite the exclusions and limitations in this agreement, then to the extent permitted by applicable law, your remedies are limited as determined by us, in the case of services to either (i) re-supply of the services or (ii) the cost of the re-supply of the services (if any), and in the case of goods to either (i) replacement of the goods or (ii) correction of defects in the goods.

## **6. Term and Termination.**

6.1 Term. This agreement will take effect on the later of the (i) date we accept this agreement or (ii) date following the expiration of your current agreement (“effective date”) and will continue for one year from the effective date (“term”), unless terminated earlier in accordance with 6.2 hereinbelow. If you upgrade from registered member status during the term, your effective date will change to the date we accept the upgrade. Upon expiration of the term, if you choose to reenroll in the program you must do so on the program website. This agreement will not renew automatically and we may choose not to renew your membership in the program.

6.2 Termination for cause. If either party breaches any provision of this agreement, and the cause for termination is curable, the non-breaching party will give 14 (fourteen) calendar days’ email or written notice and an opportunity to cure. In case the cause is not cured the agreement is terminated as per the end of the 14-days term period. If the cause for termination is not curable, termination will take effect immediately upon written notice from the non-breaching party. We retain our other rights and remedies.

6.3 Effect of termination. No refund of membership fees paid is granted. When this agreement is no longer in effect, you must immediately stop using any rights and benefits granted by this agreement and the program. You must also destroy all ITPC materials. Within 10 days of termination and at our sole discretion, you will do one of the following:

- return all copies of documents and materials containing customer information you received as a result of this agreement together with all ITPC materials and property in your possession or under your control, or
- destroy all such specified documents and ITPC materials (including any and all copies) and provide us with a certificate of destruction signed by an officer of your company.

Termination of this agreement will not, by itself, result in the termination of any unresolved request for technical support made before termination. The terms of this agreement will continue in effect solely for the purpose of such unresolved requests until the requests are resolved or are otherwise closed.

6.4 Waiver of rights and obligations. To the extent necessary to implement the termination of this agreement, each party waives any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this agreement.

## **7. Taxes.**

7.1 Taxation. We are not liable for any of your taxes that you are legally obligated to pay which are incurred or arise in connection with or related to the sale of goods and services under this agreement, and all such taxes (including but not limited to net income or gross receipts taxes, franchise taxes, and/or property taxes) shall be your financial responsibility. Where such taxes are imposed on us by law, you must pay us an amount on account of such taxes as invoiced by us to you. You will indemnify, defend and hold us harmless from any taxes (including sales or use taxes paid by you to us) or claims, causes of action, costs (including, without limitation, reasonable attorneys’ and legal fees) and any other liabilities of any nature whatsoever related to such taxes.

If, in accordance with local laws and regulations or after a determination by foreign tax authorities, any taxes are required to be withheld, on payments made by you to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing

authority. You must promptly secure and deliver to us an official receipt for any such taxes withheld or other documents necessary to enable us to claim a Tax Credit. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

7.2 Tax treatment. This tax section shall govern the treatment of all taxes arising as a result of or in connection with this agreement notwithstanding any other section of this agreement or any other document included in this agreement.

## **8. General.**

8.1 Entire agreement. The terms and conditions of this agreement including the Exhibit (and any terms applicable to specific benefits) form our entire agreement concerning the program and supersede any prior or contemporaneous communications, and any prior agreement between us and you or your affiliates relating to the program. Except as expressly provided herein, this agreement can only be changed by an amendment signed by both parties, except that we may change the program guide with respect to processes relating to program administration, policies, procedures, guidelines, benefits and similar changes. You are responsible for (a) communicating the terms of this agreement to your employees and contractors, and (b) ensuring their compliance with the terms of this agreement.

8.2 Notices. All notices and requests in connection with this agreement must be sent to the named contact person and the address you provide us in your partner profile. For notices and requests to us, see the program website. Notices are considered delivered on the date shown on the confirmation of delivery, including the date of publication to the program website. You will give us prompt notice if you or your affiliates become insolvent or enter insolvency, bankruptcy or other similar proceedings under applicable laws.

8.3 Assignment. No assignment of rights and/or duties of one contracting party is possible to a third party (whether an affiliate or not) without the prior written consent of the other contracting party.

8.4 Confidentiality. The following terms and conditions apply to exchanges of information that take place under this agreement.

- a. "Confidential information" means non-public information that you, we, or an affiliate designates as being confidential or which, under the circumstances surrounding disclosure, or given the nature of the disclosure, ought to be treated as confidential.
- b. You and we must refrain from disclosing any confidential information of the other for five years following the date of disclosure, except that if the confidential information contains personal information (such as customer contact information), there is no time limit regarding non-disclosure. Neither party will be liable for disclosure of information which the receiving party can prove (a) is already known to the receiving party without any obligation to maintain the same as confidential; (b) becomes publicly known through no wrongful act of the receiving party; (c) is rightfully received from a third party without breach of an obligation of confidentiality owed to the other party; or (d) is independently developed by the receiving party.
- c. However, confidential information may be disclosed in accordance with a judicial or other governmental order, if the receiving party either: (i) gives reasonable notice of the order to allow the disclosing party a reasonable opportunity to seek a protective order or otherwise prevent or restrict its disclosure, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will protect the confidential information to the maximum level allowed under applicable law or regulation.

- d. One party may provide the other party with suggestions, comments or voluntary feedback if it does not violate any other contractual or legal obligations. This feedback may be used, disclosed, reproduced, licensed, distributed and exploited by either party without obligation or restriction of any kind. Unless the parties specifically agree in writing, this feedback, even if designated as confidential, will not create a confidentiality obligation.
- e. We may use any technical information we derive from providing services related to our technology for problem resolution, troubleshooting, functionality enhancements and fixes, for our knowledge base. We will not identify you or disclose any of your confidential information in any item in the knowledge base.
- f. You will keep in strict confidence any customer information given to you by us under the terms of this agreement. You will also take reasonable security measures to protect the customer information from unauthorized use, access, disclosure, alteration or destruction. Security measures will include access controls, encryption and any other security means that are required to comply with applicable laws.

8.5 Relationship between you and us. Even though we may call you a 'partner', you are an independent contractor for all purposes regarding this agreement and its provisions. At no time do you have the power to (i) bind ITPC, (ii) vary any terms, conditions warranties or covenants made by ITPC, or (iii) create in favor of any person any rights that we have not previously authorized in writing. Neither this agreement, nor any of its provisions, will be construed as creating a partnership (as such term is used in applicable partnership laws to designate a legal partnership entity), joint venture, agency, or franchise relationship or any fiduciary duty between us.

8.6 Severability. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and we will amend this agreement to give effect to the stricken clause to the maximum extent possible.

8.7 Waiver. No waiver of any breach of this agreement will be a waiver of any other breach, and any waiver must be in writing and signed by an authorized representative of the waiving party.

8.8 No representations. ITPC has not made any representation to you about ITPC materials on which you have relied in deciding to acquire them or to enter into this agreement. You warrant that you have relied on your own skill and judgment or that of your advisers in relation to these matters. However, neither party limits or excludes liability for fraudulent misrepresentations.

8.9 Order of precedence. With any inconsistency between this agreement and the program guide, the agreement will prevail over the program guide. With any inconsistency between this agreement and the additional or separate terms referenced in sections 3.3(b), 3.4 and 3.5, the additional or separate terms will prevail.

**8.10 This agreement shall in all respects be exclusively governed by and construed according to the laws of Switzerland. Place of jurisdiction shall be the ordinary courts in Berne (Switzerland).**

## Exhibit to the Small Partner Agreement

### Program Guide

#### Services provided by ITPC to “Certified Business Partners”:

- Newsletter and pushing of other important information such as tech notes, etc.
- Advanced Sales Support
- BPMN Web Training including Certification (see [www.bpmessentials.com](http://www.bpmessentials.com))
- 1 license with 3 activations for every Process Modeler Edition (Business, Professional, ITIL and SOX)
- 1 license with 2 activations for a 3 user seat, each supported by the following databases (ORACLE, MS-SQL and MySQL)
- Online Support
- 10% reseller discount of any Process Modeler product
- Web link on our partner page with Logo, company name and company description

Membership fee: USD 950 per year

#### Prerequisites to become a “Certified Business Partner”:

- Passed verification rules (consulting company with BPM focus, not virtual company etc.)
- Registration in our partner database
- Back link on your web site to itp commerce (<http://www.itp-commerce.com/>)
- Payment of the annual membership fee
- Pass of the web certification

By signing below the partner agrees with the provisions of this Small Business Partner Agreement.

\_\_\_\_\_  
[insert Place/Date]

\_\_\_\_\_  
[insert name of company]

Signature

\_\_\_\_\_  
by:  
title:

Please fax complete agreement including this Exhibit to: +41 31 3053 443