



ISV Partner Agreement

Prepared for

M-Hance

Prepared by

Liam Walton
Clever Dynamics

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Outline of Agreement

BETWEEN **Clever Dynamics** ("ISV")
at

St Marks Church,
St Marks Road,
Wolverhampton,
West Midlands, WV3 0QH
United Kingdom

AND **MHance** ("Partner")
at

Sovereign House
Stockport Road
Cheadle
SK8 2EA

1.1 Background

- a) The ISV develops and supplies extensions for one or more Microsoft products.
- b) The Partner provides professional services in relation to various Microsoft products and wishes to partner with the ISV to promote and provide services in relation to certain Microsoft extensions that are supplied by the ISV.
- c) The ISV has agreed to appoint the Partner to provide specified services in relation to certain extensions developed by the ISV and the parties have agreed that the Partner will be engaged by the ISV to do so in accordance with the terms and conditions set out in this agreement.

2 Agreement

2.1 Interpretation & Definitions

2.1.1 In this agreement, the following terms will, unless the context requires otherwise, have the following meanings:

- **“Agreement”** means this agreement and all schedules attached to or incorporated into it by reference;
- **“Commencement Date”** means the date on which the second party to sign this Agreement signs it;
- **“Confidential Information”** means any information disclosed in confidence to one party by the other party, or by a third party on behalf of the other party, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:
 - a) on receipt, in the public domain or which subsequently enters the public domain without any breach of this Agreement;
 - b) on receipt, already known by the party receiving it;
 - c) at any time after the date of receipt, received in good faith from a third party;
 - d) required by law to be disclosed;
- **“Customer”** means a customer who has signed or accepted (as applicable) the End User Agreement;
- **“CSP”** means Microsoft’s Cloud Service Provider licencing scheme
- **“Discounted Price”** means the published price less the applicable discount, as specified in Part 6 (a) of Schedule 1;
- **“Documentation”** means the documentation specified in Part 3 of Schedule 1 and includes documentation and release notes (if any) made generally available by the ISV with each Revision;



- **"End User Agreement"** means:
 - a) the ISV's standard license agreement or end-user license terms under which the ISV grants to a Customer a license to use the Licensed Software version of the Extension; and/or
 - b) the ISV's standard SaaS agreement or SaaS end-user terms under which the ISV provides the Extension as SaaS (software-as-a-service);
- **"Extension"** means the ISV's extension(s) for the Microsoft Product, provided as SaaS and Licensed Software;
- **"Force Majeure Event"** means any war, riot, strike, natural or man-made disaster or other circumstance of a similar nature;
- **"Initial Term"** means a 12-month period commencing on the Commencement Date;
- **"Intellectual Property"** means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property;
- **"ISV Location"** has the meaning given to that term in Clause 2.6.2(a);
- **"Licensed Software"** means the version of the Extension provided as licensed software, specified in Part 2 of Schedule 1 and includes any Revisions, but excludes source code;
- **"Microsoft Product"** means the Microsoft product or products for which the SaaS or Licensed Software (as applicable) is an Extension, as identified in Part 1 of Schedule 1;
- **"Professional Services"** means training, installation, support services and any specified additional services in respect of the Extension, and all related activities;
- **"Revision"** means any modification to the Licensed Software in the nature of an improvement made to correct program faults or other defects or to effect enhancements to the functionality of the Licensed Software;
- **"SaaS"** means the version of the Extension provided as Software-as-a-Service, specified in Part 2 of Schedule 1, with the service being updated as and when the ISV updates or releases a new version of the software used to provide the service;
- **"Sales Services"** means marketing, demonstrating and reselling the Extension, and all related activities;
- **"Services"** means all services to be provided by the Partner under this Agreement, including without limitation the Sales Services and the Professional Services;
- **"Working Day"** means any day other than a Saturday, Sunday or public holiday in the United Kingdom.

2.2 Interpretation

- a) In this Agreement, reference to the plural includes reference to the singular, and vice versa;
- b) Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

2.3 Term

- 2.3.1** This Agreement commences on the Commencement Date and, subject to the parties' rights of earlier termination, will continue in effect for the Initial Term.
- 2.3.2** On expiration of the Initial Term, this Agreement will automatically continue for subsequent terms of one year on the same terms and conditions unless either party gives written notice of termination to the other party at least 60 days prior to the expiration of the Initial Term or any subsequent term.

2.4 Set up

- 2.4.1** Once this Agreement is signed by both parties; the Partner will undertake to ensure that an adequate number and quality of staff are trained by the ISV to be represented and support the ISV's products to a professional standard.

2.5 Appointment and license

- 2.5.1** The ISV appoints the Partner as an ISV partner and grants to the Partner a non-exclusive license to market and resell the Licensed Software and/or SaaS (as applicable) in accordance with the terms and conditions of this Agreement.
- 2.5.2** The ISV:
 - (a)** will provide marketing materials to the Partner, and grants to the Partner the right to use the ISV's logos and trademarks for the products specified in Part 2 of Schedule 1;

- (b) will identify the Partner as the ISV's partner for the Licensed Software and/or SaaS (as applicable) on its website and in any relevant marketing materials.
- 2.5.3 In addition to its other obligations under this Agreement, the Partner will always conduct its business in a manner that will reflect favourably on the Extension and on the name and reputation of the ISV.

2.6 Sales services

- 2.6.1 The Partner will:
 - (a) actively market and demonstrate the Extension to appropriate customers;
 - (b) ensure that its description of the Extension as part of any marketing and during demonstrations and otherwise, is consistent with representations made by the ISV about the Extension;
 - (c) purchase the Extension to resell to customers who have requested it.
- 2.6.2 The Extension is available from:
 - (a) the ISV directly, at the URL location specified in Part 6(a) of Schedule 1 ("ISV Location");
 - (b) Microsoft AppSource, details as specified in Part 6(b) of Schedule 1;
- 2.6.3 The Partner will ensure that the End User Agreement is executed or accepted (as applicable) by the Customer at or before the time of purchase of the Extension. Where the Partner accepts the End User Agreement on the Customer's behalf, the Partner must ensure that:
 - (a) it first has the Customer's approval to do so;
 - (b) the Partner can provide evidence of the Customer's approval of the End User Agreement to the ISV if requested to do so by the ISV; and
 - (c) within five Working Days following a request from the ISV, provide a copy of the End User Agreement, signed by the Customer, or evidence that the Customer accepted the End User Agreement (as applicable).
- 2.6.4 The ISV will give at least 60 days written notice to the Partner if, and when, the End User Agreement is revised. The revised End User Agreement will apply to:
 - (a) **New Customers:** The Partner must ensure that the most recent version of the End User Agreement is presented to new Customers;

- (b) **Renewals:** Where fixed-term subscriptions apply, on renewal of any fixed term subscription to use of the Extension, the revised End User Agreement will apply. The Partner must ensure that the most recent version of the End User Agreement is presented to Customers and signed or accepted (as applicable) by the Customer prior to renewal of their subscription;
- (c) **Existing Customers:** if the terms and conditions provide for modification of the terms and conditions during the term.

2.6.5 The ISV will keep the Partner informed of proposed Revisions to the Licensed Software and SaaS updates and provide details to the Partner as reasonably requested by the Partner. If specified in Part 5 of Schedule 1, the Partner will sell maintenance plans to Customers in respect of the Licensed Software.

2.6.6 The Partner acknowledges that:

- (a) the ISV produces new versions of the Extension to maintain compatibility with the Microsoft Product;
- (b) depending on the extent of Microsoft's redesign of the Microsoft Product in any particular new version, the ISV may be delayed in producing its new version of the Extension in which case the ISV reserves the right to:
 - i. change Customers' subscriptions to the Extension, and/or
 - ii. change the functionality of the Extension,so that a new version can be released more quickly to maintain compatibility with the Microsoft Product.

2.7 Professional services

2.7.1 The Partner will:

- (a) install the Extension for the Customer as required, whether from AppSource or manually.
- (b) train customers in the use of the Extension.
- (c) provide support services to the Customer.
- (d) follow Microsoft best-practise when extending the functionality of the Extension.

2.8 Amounts payable and payment

2.8.1 For sales of the Extension made by the Partner:

- (a) where the Extension is purchased at the ISV Location, the ISV will issue an invoice to the Partner for the applicable Discounted Price for the perpetual licence and/or subscription period. The ISV's invoice will be issued at month-end for payment by the Partner by the end of the following month;
- (b) where the Extension is licenced via Microsoft's CSP licencing, the partner will provide evidence of such licence provision at the request of the ISV no later than seven days following that request.

2.8.2 The Partner is responsible for the collection of all amounts due from the Customer. Any delay or failure by the Customer to pay the Partner does not change the Partner's obligation to pay the ISV or Microsoft (as applicable) by the due date.

2.8.3 The Partner may withhold payment of any part of an invoice issued by the ISV if the Partner genuinely disputes that the amount is owed. On the resolution of the dispute, the Partner will promptly pay the ISV the amount agreed to be paid in accordance with the dispute resolution.

2.8.4 The Partner is permitted (and expected) to establish its own agreement with the Customer for the provision of the Professional Services and the Partner may invoice the Customer and retain all amounts paid for the provision of Professional Services.

2.9 Protection of Intellectual Property

2.9.1 The Partner acknowledges that the ISV (or its licensor) is the sole owner of all Intellectual Property rights in the Extension (Licensed Software and SaaS) and the Documentation.

2.9.2 The Partner must not, nor may it permit any other person to:

- (a) copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Extension;
- (b) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret legend or notice, or any numbers, or other means of identification used on or in relation to the Licensed Software and/or the Documentation or the SaaS;

- (c) permit any person, other than its employees or contractors, access to the Licensed Software and/or the Documentation or the SaaS without the prior written consent of the ISV, except in accordance with this Agreement; or
- (d) do any act which would or might invalidate or be inconsistent with the ISV's Intellectual Property rights.

2.10 Confidential information

2.10.1 Each party agrees to:

- (a) hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:
 - i. comes into its possession pursuant to, or as a result of, or in the performance of, this Agreement;
 - ii. is confidential and clearly so identified; or
 - iii. involves business plans or financial and personnel affairs; and,
- (b) ensure that all Confidential Information is:
 - i. used only for the purposes of performance of this Agreement; and
 - ii. always protected from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

2.11 Warranties

2.11.1 The ISV warrants that:

- (a) it (or its licensors) own(s) the Intellectual Property in the Extension, and that the Extension is original, that it does not infringe the Intellectual Property rights of any third party and that it has the right and authority to grant a license to the Partner as provided under this Agreement;
- (b) the Extension is free from material defects and material known errors except those specifically published as known issues, and;

- (c) any training provided by the ISV to the Partner will be sufficient for the employees and contractors of the Partner that complete that training to have sufficient knowledge of the Extension for the purposes of this Agreement;
- (d) If any bugs are identified in the Extension, the ISV will work diligently to provide a fix however the timing for the release of the fixed Extension is dependent on Microsoft undertaking its AppSource validation process (for which Microsoft does not provide any timing commitments to the ISV).

2.11.2 The Partner warrants that:

- (a) it is capable of performing the Services and that all Services will be actioned with due care and skill by people that have the requisite skills, expertise and competence;
- (b) it will offer (for a fee) first-line support on the Extension to the customer of a professional standard and against pre-agreed SLA's.
- (c) it will carry out its obligations with care, skill and diligence and will employ techniques, methods, procedures and materials of high quality and standard in accordance with best practice to ensure its obligations are discharged to a professional standard.
- (d) Will not commit the ISV to any timescale for delivery of second-level support or fix except those previously agreed with the ISV.

2.12 Termination

2.12.1 Either party may terminate this Agreement on written notice to the other party:

- (a) if one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):
 - i. a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or
 - ii. the party is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or suspends payment to its creditors;
- (b) if the other party commits a material breach of any of its obligations under this Agreement and fails to remedy that breach within 60 days of prior written notice of such breach.

2.13 Consequences of termination

2.13.1 On termination of this Agreement:

- (a) subject to clause 2.13.2:
 - i. the Partner will cease to represent itself as an ISV Partner and will cease to promote, market and sell the Extension and will cease to provide services in respect of the Extension;
 - ii. the Partner will co-operate with the ISV to have the Partner's agreements with Customers, for provision of support services to Customers (if any), assigned or novated in favour of the ISV or a nominated third party. Nothing in this Clause 2.13.1(a)(ii) obliges the Partner to assign or novate or to assist with an assignment or novation of all or part of an agreement that it has with a Customer where the agreement governs the provision of services other than support services in respect of the Extension;
- (b) the Partner will pay the ISV all amounts due to the ISV, by the due date for payment.

2.13.2 Where this Agreement has been terminated by the Partner for breach by the ISV, the Partner may, at its option, continue to provide support services to the Customers with which the Partner has, at the date of termination, a contract to provide support services in respect of the Extension.

2.14 Liability and indemnity

- 2.14.1 Neither party is liable to the other party for loss other than loss which flows directly from a breach of this Agreement up to a maximum of the amount paid by the Partner to the ISV in the twelve months preceding the date of the event giving rise to the claim provided that the limitation of liability in this clause does not apply to:
 - (a) any breach of clauses 2.9.2 or 2.10; or
 - (b) clause 2.14.3.
- 2.14.2 In no event is the ISV liable to the Partner for any indirect loss including without limitation any indirect loss which constitutes loss of business, loss of profits or business interruption, or for any consequential loss.
- 2.14.3 The Partner indemnifies the ISV against any losses, costs (including legal costs on a solicitor and own client basis), expenses, demands or liability whether direct, indirect, consequential

or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of a claim by a third party against the ISV where the claim arises from any breach by the Partner of its obligations under this Agreement.

2.15 Dispute Resolution

- 2.15.1** In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 15.
- 2.15.2** The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have the authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.
- 14.3** If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

2.16 Non-Solicitation

- 2.16.1** Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of the Agreement.
- 2.15.2** A party may, as a condition of granting its consent under Clause 2.16.1 above, require the other party to pay to it a fee of 30 per cent of the person's gross annual remuneration to cover the cost of replacing the employee or contractor.

2.17 Notices

2.17.1 Any notice or other communication in connection with this Agreement must be:

- (a) marked for the attention of the person specified in Schedule 2 or any replacement person notified in writing by the relevant party; and
- (b) left at the address or sent by prepaid post or email to the address of the relevant party specified in Schedule 2 or any replacement address notified by that party.

2.17.2 Notices or other communications are deemed received:

- (a) if delivered by hand, on delivery;
- (b) if delivered by post:
 - i. on the third day following posting if sent and received within the United Kingdom; and
 - ii. on the tenth day following posting if posted internationally;
- (c) if sent by email, on sending the email provided that no email is successfully sent if the sender receives any type of delivery notification failure.

2.18 Force majeure

2.18.1 Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

2.18.2 Where a party's obligations have been suspended pursuant to Clause 2.18.1 for a period of 60 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.

2.19 Distribution of other products

2.19.1 Nothing in this Agreement prevents the Partner from marketing or distributing any other products, including products which are or may be supplied by competitors to the ISV.

2.20 General

- 2.20.1 **Assignment:** Neither party may assign its rights under this Agreement without the prior written consent of the other party.
- 2.20.2 **Contractors:** The Partner may, at its discretion, perform its obligations under this Agreement using independent contractors selected by the Partner.
- 2.20.3 **Survival:** All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.
- 2.20.4 **Entire agreement:** This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- 2.20.5 **Further assurances:** The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.
- 2.20.6 **Amendments:** Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 2.20.7 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.
- 2.20.8 **Partial invalidity:** If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 2.20.9 **Governing law and jurisdiction:** This Agreement is governed by the laws of the United Kingdom. The parties hereby submit to the non-exclusive jurisdiction of the courts of the United Kingdom.



EXECUTED as an Agreement

Signed by **Clever Dynamics**, by its duly authorised signatory:

A handwritten signature in black ink, appearing to read "Liam Walton".

Name: Liam Walton

Title: Sales Director

Date: 12/11/2024

Signed by **MHance**, by its duly authorised signatory:

A handwritten signature in black ink, appearing to read "Alan Moody".
Alan Moody (Nov 18, 2024 11:37 GMT)

Name: Alan Moody

Title: CEO

Date: 13/11/2024



3 Schedule 1

Microsoft Product & Extensions

Part 1. Microsoft Product

Microsoft Dynamics 365 Business Central

Part 2. Extensions – SaaS & Licensed Software

- Clever WMS collection ([URL](#))
- Clever MES collection ([URL](#))
- Clever Essentials collection ([URL](#))

Part 3. Retail Pricing and Discounted Prices for Extensions

(a) **Extension Pricing:** Based on ISV's current list price at the time of purchase

(b) **Discounted Price:** 30% discount off Extension Pricing described above.

Part 4. Documentation

All documentation is available from:

<https://docs.cleverdynamics.com>

Part 5. Maintenance

Maintenance is mandatory in the first year of all licensed software sales. Maintenance fees are calculated as 16% of the Recommended Retail Price of the software, as published by the ISV at the time of the sale.

Maintenance is included in the subscription for all SaaS and subscription sales.

The ISV is responsible for the provision of revised Extensions, installation and training required by the customer is the sole responsibility of the Partner.

Part 6. Purchase Locations

(c) **ISV Location:** <https://www.cleverdynamics.com/partner>

(d) **Microsoft AppSource**



4 Schedule 2

Contact details

ISV: Clever Dynamics

Postal Address: St Mark's Church,
St Mark's Road,
Wolverhampton,
West Midlands, WV3 0QH.
United Kingdom

For Attention of: Contract Administrator

Email Address: admin@cleverdynamics.com

Partner: MHance

Postal Address: Sovereign House
Stockport Road, Cheadle
SK8 2EA

For Attention of: Alan Moody

Email Address: alan.moody@mhance.com

ISV Partner Agreement -MHance

Final Audit Report

2024-11-18

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 Signer alan.moody@m-hance.com entered name at signing as Alan Moody
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