



IBM PartnerWorld Agreement - International

Software Value Incentive Attachment

The terms of this Attachment modify and prevail over the terms of the IBM PartnerWorld Agreement-International Basic General Terms.

Under the terms of this Attachment, you may receive fees for activities you perform which eventually result in the sale of Eligible Products and which meet the requirements of an Eligible Transaction.

Unless we specify otherwise, you may have only one Software Value Incentive (SVI) enrollment per country within your Enterprise for participation in this offering.

As specified in the Operations Guide (SVI Operations Guide), you agree to notify IBM in writing if your Enterprise is participating in IBM programs or offerings identified in the Operations Guide as being mutually exclusive. If you participate under the terms of this Attachment, you may not participate in a mutually exclusive program unless otherwise specified in the Operations Guide.

1. Definitions

Eligible Products – the products that IBM specifies to you under “SVI Eligible Product List” in the Operations Guide. Part numbers which do not include IBM program licenses (such as an annual software subscription and support renewal), and programs IBM provides in a tangible format are not eligible.

Eligible Transactions – sales of Eligible Products to End Users, where the opportunity for such sale was submitted to IBM and approved for this offering according to IBM's instructions and meets the requirements described in the Operations Guide. However, IBM excludes all transactions covered under any IBM OEM agreement and any other exclusions or restricted transaction types specified in the Operations Guide.

End User – anyone who is not part of the Enterprise of which you are a part who acquires Products for its own use and not for resale.

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

Operations Guide (and “operations guide”) – details, processes, procedures, and other pertinent information and requirements, which IBM provides to you in one or more published forms or through our electronic information systems or a combination of both, for the Software Value Incentive offering for which you are approved.

2. Our Relationship

You agree:

- a. to provide a single point of contact as we specify in the Operations Guide;
- b. to give IBM prompt written notice (unless precluded by law or regulation) of any material change or anticipated change to the information supplied in your application to participate. Upon notification of such change or in the event of failure to give notice of such change, IBM may at its sole discretion immediately terminate this Attachment;
- c. to retain records of Eligible Transactions, as specified in the Operations Guide, for a minimum of three years;
- d. if you change Distributors, to advise IBM in writing at least 30 days in advance of such change, as specified in the Operations Guide. Any limitation on the number of times you may change Distributors under this program will be stated in the Operations Guide;
- e. to submit the sales opportunity to IBM in the time frame and format as specified in the Operations Guide;
- f. to provide IBM with required supporting documentation in the time period described in the Operations Guide;
- g. to monitor the Operations Guide on a regular basis for changes to the listing of Eligible Products; and

- h. as notification of IBM's approval of your participation in the Software Value Incentive offering, IBM may forward information you provide to us in the Software Value Incentive application and other information that you may otherwise provide to confirm your eligibility or identify marketing opportunities (for example, current certifications and transaction activity) to the IBM Distributor you have designated. You also agree to obtain any consents needed so that IBM can use the information you provide to us for the intended purpose.

3. Fees and Payment

Any fee IBM pays to you will be for Eligible Transactions and will be based on activities you perform during the sales cycle, as described in the Operations Guide.

You earn the fee when the order, which meets the criteria of an Eligible Transaction, is processed by IBM and IBM receives from you the required documentation, as specified in the Operations Guide.

IBM specifies fee calculations under the "Fee Calculation" section of the Operations Guide. The timetable on which we pay the fees is quarterly, as specified in the Operations Guide.

In countries where required, you agree to submit a request for payment to us for the amount and in the format and time frame we specify. Payment processes will be specified in the Operations Guide.

If for any reason an Eligible Product you marketed is returned to us or if IBM either overpays you or pays you a fee which is later determined by IBM to be unearned, you agree to reimburse IBM the amount of such fee or overpayment upon IBM's notice to you and within the time frame IBM specifies in such notice.

If you receive a fee for a transaction, you are ineligible to receive fees for the same transaction under any other offerings.

IBM may withhold the fees earned under this offering if you owe IBM funds either under this offering or for another IBM program or offering.

It is your responsibility to complete any legally required, or otherwise commercially appropriate (for example, as requested by your client) disclosure in writing to the End User regarding any requested fee or other compensation under this Agreement and provide us with a copy of such disclosure, on request.

You will not be eligible for any fees or other compensation under this Agreement for any sales when such compensation would violate any law or regulation, including any anti-bribery and anti-kickback rules and regulations.

Unless IBM otherwise expressly agrees in writing, you will not be eligible for any fees or other compensation under this Agreement for any sales to a Public Sector End User. A Public Sector End User shall be defined as (i) the government of any country, state, province, city, county, town, territory or other municipality within the Geographic Scope, (ii) any corporation, educational institution or other entity that is owned or controlled by, or subject to the procurement regulations of, any entity in subsection (i) immediately above and (iii) any prime contractor who holds a contract with any entity in subsections (i) and (ii), immediately above. The following entities are not Public Sector End Users: privately-owned and controlled (1) utility companies (2) hospitals and (3) research institutes that operate using non-government funds.

In the event you violate any of the provisions of this section, IBM is not liable to pay you fees or other compensation for the subject transaction, and if we have already paid you such fees or other compensation, you agree to repay it promptly on demand.

4. Liability

For purposes of this Attachment, the first sentence of the second paragraph of the Liability section of the PartnerWorld Agreement-International is revised as follows:

In the event of a default in the performance of this Agreement, including fundamental breach, tort, negligence, or misrepresentation a) either party will only be liable to the other for any actual direct damages in the aggregate up to the greater of \$25,000 (or its equivalent in local currency) or the amounts of fees paid or payable as provided in the Fees and Payment Section of this Attachment and b) neither of us will be liable for any lost profits, business, revenue, goodwill or anticipated savings, special, indirect, incidental or for any economical consequential damages, even if advised of their possibility.

(All other terms of the Liability section of the IBM PartnerWorld Agreement-International, Basic General Terms apply).

5. Changes to this Attachment and Term of this Attachment

The effective date of this Attachment is the date IBM accepts it. This Attachment can be terminated as provided in the PartnerWorld Agreement – International Basic General Terms.

We may change the terms of this Attachment on one month's written notice.

6. Geographic Scope

You agree that the rights, duties and obligations of both of us are valid only in the country in which we provide, and you accept, benefits under this Attachment.

7. Acceptance of Terms

You accept the terms of this Attachment by signing it or another document that incorporates it (by hand or electronically). Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all transactions under this Attachment are subject to it.

Agreed to:

Agreed to:

IBM World Trade Corporation
New Orchard Road
Armonk
New York 10504
USA

*The local IBM organization or
IBM Central and Eastern Europe/Middle
East/Africa Inc. informs you herewith
That it has been empowered by IBM
WorldTrade Corporation to
Confirm that this Agreement has
been accepted by the latter.*

By _____
(Authorized signature)

(Name)

(Date)

By _____
(Authorized signature)

(Name)

(Date)