

IBM PartnerWorld Agreement - International

Basic General Terms

We welcome you as an IBM PartnerWorld participant. The purpose of PartnerWorld is to provide you with marketing, technical and development support related to IBM products and services.

PartnerWorld consists of the Member, Advanced and Premier levels. All PartnerWorld participants qualify at the Member level. You may qualify for the Advanced or Premier level by achieving the required number of points and meeting the minimum requirements for each of these levels as we specify on IBM's Internet PartnerWorld website (the "PartnerWorld Website"). PartnerWorld participants may use the title "IBM Business Partner". Upon our confirmation, participants meeting the requirements of the Advanced level may use the standard IBM Business Partner emblem and the IBM Advanced Business Partner title. Participants meeting the requirements of the Premier level may use the IBM Premier Business Partner emblem and IBM Premier Business Partner title. Usage of these titles and emblems is subject to the terms of this Agreement. In addition, participants may also be approved to use other IBM Business Partner titles and emblems. If you have authorization to use the IBM title and emblem under the terms of another relationship, you may continue to do so.

We provide you with benefits through your participation in PartnerWorld. Benefits are associated with the level you achieve. We specify the details of the benefits and the conditions which apply, including charges, if any, on the PartnerWorld Website.

Participation in PartnerWorld is by Country Enterprise as specified on the PartnerWorld Website.

1. Definitions

Country Enterprise - all of the Enterprise's Locations within a single country.

Enterprise - any legal entity and the subsidiaries it owns by more than 50 percent.

Location - means a site at which you are located, controlled and operated by you, and which is within your Enterprise.

Worldwide Enterprise - means all the Locations of an Enterprise in all countries.

2. Level and Benefit Qualifications

Each level and certain benefits have requirements. Therefore, you agree that:

- a. to qualify for the level or for a benefit, the Country Enterprise must meet the requirements for such level or benefit; and
- b. you will maintain the requirements of the level you achieve or a benefit you select. If you do not, your membership level will be adjusted to the level you have achieved.

If there are skill requirements for the level you achieve or for a benefit you select, you agree to give us prompt written notice if you do not retain such skill requirements. If you wish to retain the level or the benefit, you agree to replace such skills within three months of the loss. Failure to notify us on a timely basis of such loss or to replace such skills may result in our adjusting your level to that for which you qualify, or ending our approval of you for the benefit.

3. Agreement Structure

This IBM PartnerWorld Agreement- International Basic General Terms, Attachments (such as those which include terms associated with certain benefits) and any related transaction documents (such as supplements, exhibits or invoices), are the complete agreement (collectively called "the Agreement") regarding your participation in PartnerWorld, and replace any prior oral or written communication between us.

If there is a conflict among the terms in the various documents, the terms of:

- a. a transaction document prevail over those of all documents; and
- b. an Attachment prevails over the terms of the International Basic General Terms.

You accept the terms in a transaction document by signing it, or by accepting, using or paying for that which is the subject of the transaction document.

4. Electronic Communications

Each of us may communicate with the other by electronic means (for example, to provide written notice or consent to the other), and such communication is acceptable as a signed writing to the extent permissible under applicable law. Both of us agree that for all electronic communications, an identification code (called an "IBM ID" or Web identity ID) contained in an electronic document is sufficient to verify the sender's

identity and the document's authenticity.

5. Responsibilities

Each of us agrees that:

- a. both of us are independent contractors, and the Agreement is non-exclusive. Neither of us is a legal representative nor legal agent of the other. Neither of us is legally a partner of the other (for example, neither of us is responsible for debts incurred by the other), and neither of us is an employee or franchise of the other, nor does the Agreement create a joint venture between us;
- b. each of us is responsible for our own expenses regarding fulfillment of our responsibilities and obligations under the terms of this Agreement;
- c. nothing contained herein grants us any rights or obligations with regard to your products or services;
- d. neither of us will assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized;
- e. any terms of the Agreement, which by their nature extend beyond the date the Agreement ends, remain in effect until fulfilled and apply to respective successors and assignees;
- f. to the extent such permission is required by law, you and IBM each agree to allow the other to store and use the other's business contact information (employees' names and their business addresses, business phone numbers, and business e-mail addresses), anywhere the other does business when such business contact information is provided in a way that would lead a reasonable person to conclude that the person providing the business contact information understood that such business contact information would be used to contact them in the future. Such business contact information will be processed and used by each of us solely in connection with our business relationship, and may be provided to (1) third parties who may promote, market, and support certain of our respective products and services and (2) permitted successors and assigns. If one of us no longer wishes the other to contact a particular person working for them or on their behalf, upon written request, the other will undertake reasonable efforts to cease sending information to that person; provided, however, that if certain business contact information is necessary for the continuation of the business relationship (for example, the person is the contact to whom invoices are sent), the party making the request will provide alternative business contact information for someone authorized to act for them or on their behalf;
- g. neither of us will bring a legal action against the other more than two years after the cause of action arose, unless otherwise provided by applicable law without the possibility of contractual waiver;
- h. failure by either of us to insist on strict performance or to exercise a right when entitled does not prevent either of us from doing so at a later time, either in relation to that default or any subsequent one;
 - i. neither of us is responsible for failure to fulfill obligations due to causes beyond the control of either of us;
 - j. either party may transfer this Agreement within their Enterprise or to a successor organization by merger or acquisition, without consent of the other. The transferring party agrees to advise the other party in writing within one month of the transfer. IBM may transfer, delegate, subcontract, or assign, in whole or in part, our obligations and rights under this Agreement. You may not delegate, subcontract or assign (or transfer other than as provided in this Agreement) this Agreement, in whole or in part, without our prior written consent;
- k. except as otherwise stated in the Confidential Information section of this Agreement, all other information exchanged between us is nonconfidential;
- l. if any provision of this Agreement is determined to be invalid or otherwise unenforceable, such provision will be deemed deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect as written;
- m. each of us will comply with all applicable laws and regulations including export laws; and
- n. this Agreement does not include our approval for you to market our products and services under remarketer terms or complementary marketing terms unless we specify otherwise in an Attachment.

You agree:

- a. to be responsible for customer satisfaction for all your activities;
- b. that to receive benefits in any country, you must register and be accepted by the IBM organization for that country or that organization's designee. Not all benefits are available in all countries;
- c. that for certain lead offerings, if we provide a lead to you, to report to us the results of your activities, as we specify in writing;
- d. to provide to us new contact information, including email address, should your primary company contact change;
- e. to provide information to us, which we reasonably require (for example, information regarding your qualification for a level or benefit, or documentation of your skills certification);
- f. that when we provide you with access to our information systems, it is only in support of your activities under the Agreement. Programs we provide to you for your use with our information systems, which are in support of such activities, are subject to the terms of their applicable license agreements, except you may not transfer them;
- g. that you will not offer or make payments or gifts (monetary or otherwise) to anyone for the purpose of wrongfully influencing decisions in favor of IBM, directly or indirectly. IBM may terminate the Agreement immediately in case of 1) a breach of this clause or 2) when IBM reasonably believes such a breach has occurred or is likely to occur;
- h. to give us prompt written notice (unless precluded by law or regulation) of any material change or

- anticipated change in the information you provide to participate in PartnerWorld; and
- i. to comply with the terms of the Code of Conduct as set forth in URL:
https://www.ibm.com/partnerworld/page/pw_com_jnw_code_conduct.

6. Internal Use, Development, Demonstration and Evaluation Products

If you acquire products we designate for internal use, such products are for use only within your Business Partner operations.

If you acquire products we designate for development, demonstration or evaluation purposes, such products are for use for such purposes and in support of your Business Partner activities under the Agreement.

All products acquired for the above purposes will be acquired under the terms of the applicable agreement.

Products acquired for the above purposes must be retained for use for such purposes for the period we specify on the PartnerWorld Website. During such period, products may not be used for work-for-charge.

Programs acquired for the above purposes are subject to the terms of their license agreement except that they may not be transferred. In addition, programs acquired for evaluation purposes may be provided on an "as is" basis without technical support. We will advise you on the PartnerWorld Website if technical support is provided for such programs.

7. Trademarks

We will notify you in writing of the applicable Business Partner title, and emblem if any, which you are authorized to use. We will provide you written guidelines, which we may periodically modify, regarding the use of the Business Partner title and emblem. You may not modify the emblem or title in any way. You may use our Trademarks (which include the title, emblem, IBM trademarks and service marks) only:

- a. in accordance with the terms of this Agreement; and
- b. as described in the written guidelines, we provide to you.

The royalty normally associated with non-exclusive use of our Trademarks will be waived, since the use of this asset is in conjunction with your activities under the Agreement.

You agree to promptly modify, at your expense, any advertising or promotional materials that do not comply with our guidelines. If you receive any complaints about your use of our Trademark, you agree to promptly notify us. When the Agreement ends, you agree to promptly stop using our Trademarks. If you do not, you agree to pay any expenses and fees we incur in getting you to stop.

You agree not to register or use any mark that is confusingly similar to any of our Trademarks.

Our Trademarks, and any goodwill resulting from your use of them, belong to us.

8. Marketing Funds and Promotional Offerings

We may provide marketing funds and promotional offerings to you. You must accept any applicable Attachment(s) and/or transaction document(s) to receive marketing funds or promotional offerings. If we do, you agree to use them according to our guidelines and to maintain records of your activities regarding the use of such funds and offerings for three years. We may withdraw or recover marketing funds and promotional offerings from you if you breach any terms of the Agreement. Upon notification of termination of the Agreement, marketing funds and promotional offerings will no longer be available for use by you, unless we specify otherwise in writing.

9. Benefit Charges and Payment Terms

There is no charge to participate in the PartnerWorld program, however you agree to pay the applicable charges, if any, associated with a benefit you select. We specify such charges at the PartnerWorld Website. The charge is the lower of the charge in effect on the date we receive your request, or the date we fulfill your request.

We may change charges at any time. Such changes are not retroactive.

Amounts are due upon receipt of invoice and payable as specified in an invoice or transaction document. You agree to pay accordingly, including any late payment fee.

If any authority imposes a duty, tax, levy, or fee, excluding those based on our net income, upon any transaction under this Agreement, then you agree to pay that amount.

10. Change in Terms

We may change the terms of the Agreement by giving you one month's notice. However, we may change the terms relating to safety and security at any time.

We will notify you if there are changes to the Agreement. Changes will be provided by posting them, or the Agreement with the changes incorporated, at

https://www.ibm.com/partnerworld/page/isv_com_pwp_PWBGT_changes. You agree to check the Web site for changes, once notified.

Otherwise, for any other change to be valid (including changes to these Basic General Terms), both of us must agree in a signed writing. Changes are not retroactive. Additional or different terms in any written communication from you are void.

11. Confidential Information

Each of us agrees that the terms of this section apply to confidential information (Information) specified below identified as "Confidential" when one of us or its Affiliate ("discloser") discloses Information to the other or its Affiliate ("recipient") under this Agreement. An "Affiliate" is an entity that controls, is controlled by, or is under common control with a party to this Agreement:

- a. information regarding prospects and customers;
- b. unannounced products and services, and any related technical information;
- c. business plans;
- d. any of the following information you provide to us on our request:
 - o reporting data;
 - o customer satisfaction data;
 - o financial data; and
 - o sales information;
- e. any information on the Web site identified as "Confidential". We may identify such information as confidential either in writing or on the Web site. Your access of such information is considered your agreement to accept it as confidential; and
- f. any other information which we agree in writing and which is identified as "Confidential".

The recipient of the Information, for a period of two years from the initial date of disclosure, agrees to use the 1) same care and discretion to avoid disclosure, publication or dissemination of the discloser's information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and 2) discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the discloser.

The recipient may disclose Information within the Enterprise and to any of its Affiliates who have a need to know, and to any other party with the discloser's prior written consent, if there is a written agreement with the other party sufficient to require that party to treat the Information in accordance with this Agreement.

The recipient may disclose, publish, disseminate, and use Information that is 1) already in its possession without obligation of confidentiality, 2) developed independently, 3) obtained from a source other than the discloser without obligation of confidentiality, 4) publicly available when received, or subsequently becomes publicly available through no fault of the recipient, or 5) disclosed by the discloser to another without obligation of confidentiality.

The recipient may use in its business activities the ideas, concepts and know-how contained in the discloser's Information which are retained in the memories of recipient's employees who have had access to the Information under this Agreement.

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The recipient uses Information provided by the discloser at its own risk.

Neither this Section 11 nor any disclosure of Information made under it grants the recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the discloser.

The receipt of Information pursuant to this Agreement will not preclude, or in any way limit, the recipient from 1) providing to others products or services which may be competitive with products or services of the discloser, 2) providing products or services to others who compete with the discloser, or 3) assigning its employees in any way it may choose.

12. Liability

You will indemnify us and our Enterprise for third party claims arising out of your conduct under this Agreement.

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 up to \$25,000 (or its equivalent in local currency) in the aggregate, 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. These limitations will not apply to 1) your obligation to indemnify us for third party claims made against us arising out of your conduct under this Agreement, 2) any claim based on your breach of our intellectual property rights, including failure to use Trademarks in accordance with our guidelines, 3) your misrepresentation or fraud, particularly regarding

statements, claims or warranties not authorized by us, and 4) any liability, including liability based on intent or gross negligence, which under applicable mandatory law may not be excluded or limited.

13. Ending the Agreement

Either of us may terminate the Agreement or any of its Attachments, with or without cause, on two weeks written notice. If the termination is for cause, the termination will be effective only if the cause is not cured during the two week notice period.

You agree that if we permit you to perform certain activities after this Agreement ends, you will do so under the terms of this Agreement, or as we otherwise specify.

14. Geographic Scope

The rights, duties and obligations of each of us under the terms of this IBM PartnerWorld Agreement, are valid worldwide. The rights, duties and obligations of each of us under the terms of an Attachment are valid worldwide, unless specified otherwise in the Attachment.

Certain benefits will be provided by the International Business Machines Corporation and those benefits will be provided under the terms of this Agreement and any applicable Attachment. International Business Machines Corporation, by providing the benefit, and you, by signing any applicable Attachment or by accepting the benefit, agree that this Agreement is between you and the International Business Machines Corporation. This Agreement and any applicable Attachments will then be between you and International Business Machines Corporation and will be the complete understanding with respect to those benefits.

Other benefits will be provided by the IBM organization for a country or that organization's designee and those benefits also will be provided under the terms of this Agreement and any applicable Attachments. In such case, the IBM organization or that organization's designee, by providing the benefit, and you, by signing any applicable Attachment or by accepting the benefit, agree that this Agreement is between you and the IBM organization for that country, or that organization's designee. IBM Corporation is then not a party to this Agreement. This Agreement and any Applicable Attachments will then be only between you and the IBM organization for that country, or that organization's designee and will be the complete understanding with respect to those benefits.

In addition, you may receive certain benefits and other products and services under a separate agreement between you and the IBM organization for that country or that organization's designee.

15. Governing Law

You are entering into this Agreement with International Business Machines Corporation, a New York corporation. The laws of the State of New York will govern, construe, and enforce all of the rights, duties, and obligations arising under, or relating in any manner to, the subject matter of this Agreement, notwithstanding any conflicts of law principles.

You agree that International Business Machines Corporation or any entity in its Enterprise may assign any rights or claims against you to any other entity in its Enterprise and/or authorize any entity in its Enterprise to bring any claims against you on its or their behalf. You agree to such assignments or authorizations. You further agree that when benefits are provided by an entity in that Enterprise other than International Business Machines Corporation, or by that entity's designee, the laws and the jurisdiction of the courts of the country in which such entity or its designee is doing business will apply to govern, interpret and enforce rights, duties, and obligations of each of us arising from, or relating in any manner to, the subject matter of this Agreement, except that in:

1. Australia, the laws of the State or Territory in which the transaction is performed apply;
2. Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Hungary, Serbia, Poland, Montenegro, Romania, Slovakia, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Macedonia, Moldavia, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, the laws of Austria apply. All disputes arising out of this Agreement or related to its violation, termination, or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be in English. The decision of the arbitrators will be final and binding on both parties;
3. Estonia, Latvia, and Lithuania, the laws of Finland apply;
4. Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Mali, Mauritania, Morocco, Niger, Senegal, Togo, and Tunisia, this Agreement will be construed and the legal relations between the parties will be determined in accordance with the French laws and all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris;
5. Angola, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe, this Agreement will be governed by English Law and disputes relating to it will be submitted to

the exclusive jurisdiction of the English courts;

6. Canada, the laws of the Province of Ontario apply;
7. Indonesia, the laws of Indonesia apply except that termination shall take effect without the requirement of a court pronouncement for purposes of which we both agree to waive the provisions of article 1266 Indonesian Civil Code, 2nd and 3rd paragraphs;
8. People's Republic of China, disputes arising out of this Agreement will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration shall take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement shall continue to be performed except for the part which the parties are disputing and which is undergoing arbitration;
9. Argentina, jurisdiction will be in "the Ordinary Commercial Court of the city of Buenos Aires";
10. Bolivia, jurisdiction will be in "the courts of the city of La Paz";
11. Brazil, jurisdiction will be in "the court of Rio de Janeiro, RJ";
12. Chile, jurisdiction will be in "the Civil Courts of Justice of Santiago";
13. Ecuador, jurisdiction will be in "the civil judges of Quito for executory or summary proceedings (as applicable)";
14. Macau Special Administrative Region of China, the laws of Hong Kong Special Administrative Region of China apply;
15. Mexico, jurisdiction will be in "the courts located in Mexico City, Federal District";
16. Paraguay, jurisdiction will be in "the courts of the city of Asuncion";
17. Peru, jurisdiction will be in "the judges and tribunals of the judicial district of Lima, Cercado";
18. Uruguay, jurisdiction will be in "the courts of the city of Montevideo";
19. Venezuela, jurisdiction will be in "the courts of the metropolitan area of the city of Caracas";
20. the United States, Puerto Rico, Laos, Cambodia, and Vietnam, the laws of the State of New York apply; and
21. Laos, Cambodia, Indonesia, Philippines, Vietnam and India. Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in **<location>** in accordance with **<rules>** then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law. The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by **<whom>**. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred. If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.
Laos, Cambodia, Indonesia and Philippines: *Replace <location> with: Singapore. Replace <rules> with: the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules"). Replace <whom> with: the president of the SIAC.*
Vietnam: *Replace <location> with: the Socialist Republic of Vietnam. Replace <rules> with: the Arbitration Rules of Vietnam International Arbitration Center ("VIAC Rules"). Replace <whom> with: the Chairman of VIAC.*
India: *Replace <location> with: Bangalore, India. Replace <rules> with: the laws of India. Replace <whom> with: the president of the Bar Council of India.*

The application of the above referenced laws is without regard to applicable conflict of laws principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.