

# IBM Customer Agreement

## Attachment for IBM Internet Security Systems Products and Services

This Attachment for IBM Internet Security Systems Products and Services (“Attachment”) is between the Customer (also referred to as “Client” or “you”) and IBM Vietnam Company (“IBM”). This Attachment covers the acquisition of IBM Internet Security Systems (“IBM ISS”) Products and Services only. IBM hardware and licensed software programs are acquired under separate agreement. The terms of this Attachment are in addition to the terms of the IBM Customer Agreement, the International IBM Customer Agreement, or any equivalent agreement signed by Customer and IBM (“Agreement”) specified below. This Attachment between the parties includes the Agreement, the terms and conditions of this Attachment, and Order forms signed by the parties. In the event of a conflict between this Attachment and:

- a. the Agreement, this Attachment will prevail; or
- b. an Order, the Order will prevail, except where an Order or a provision contained therein expressly states that this Attachment will prevail over the Order.

### 1. Definitions

**Appliance** – an IBM ISS Product consisting of Software pre-installed on a single hardware device (“Machine”). Machines consist of the applicable device and pertinent user documentation.

**Managed Security Services** – those managed security services which allow an organization to outsource the management of certain Internet security functions as further described in the Managed Security Services section of this Attachment.

**Order** – (i) any initial Order; (ii) a Sales Quotation or Statement of Work (including any applicable Services Order form) signed by Customer’s authorized representative and accepted by IBM; (iii) Customer’s purchase order(s) as accepted by IBM, provided such purchase orders will be governed by and do not alter the terms of this Attachment; or (iv) any written amendment or supplement to the foregoing referencing this Attachment and signed by each party’s authorized representative.

**Product(s)** – the IBM ISS Software and/or IBM ISS Appliance(s) supplied to Customer under this Attachment, excluding Third Party Products.

**Software** – the machine-readable instructions, the pertinent user documentation, and the periodic updates, error corrections, enhancements and new releases produced by IBM and acquired by Customer under the maintenance and support program. Software is provided in object code only.

**Third Party Product(s)** – any software or hardware supplied to Customer under this Attachment which is not produced by IBM. Third Party Products include “Third Party Hardware” and “Third Party Software”.

### 2. Services

The Services to be provided by IBM are those set forth in the applicable Order.

#### 2.1 Security Services

Should an Order include security scanning, testing, assessment, forensics, or remediation Services (“Security Services”), Customer understands and agrees that IBM may use various methods and software tools to probe network resources for security-related information and to detect actual or potential security flaws and vulnerabilities. Customer authorizes IBM to perform such Security Services on network resources with the IP addresses identified by Customer. IBM shall perform Security Services during a mutually agreed timeframe.

#### 2.2 Managed Security Services

This section applies only to Managed Security Services set forth and described in the applicable Order, if any.

##### 2.2.1 Commencement and Renewal

IBM will begin invoicing all Managed Security Services specified in an Order upon the earlier of: i) commencement of the services, or ii) thirty (30) days from the commencement date specified in the Order, other than due to delay by IBM..

If no Managed Security Services commencement date is stated in the Order, such commencement date will be deemed to be thirty (30) days from the Order date. Managed Security Services will be provided for

the duration specified in the applicable Order. IBM will notify Customer approximately ninety (90) days prior to the expiration of the then-current term, and unless Customer provides written notice within sixty (60) days thereafter of its intention to discontinue the Managed Security Services, the term for the Managed Security Services shall automatically renew for an additional period of the same duration. Neither party will have any liability to the other for not renewing Managed Security Services. Fees for renewal periods are subject to change. Customer may cancel the Managed Security Services at any time during the initial, or any renewal contract period by providing sixty (60) days prior written notice. Upon cancellation, Customer agrees to pay IBM all Managed Security Services fees through the effective date of cancellation and an early cancellation fee equal to fifty percent (50%) of such fees for the remaining contract period.

## **2.2.2 Changes**

The parties may make changes to the Managed Security Services schedules and fees by means of a revised Order.

## **2.2.3 Service Level Agreements**

During the period for which Customer has paid the applicable Managed Security Services fees, IBM will provide Managed Security Services in accordance with the prevailing service descriptions and associated service level agreements applicable to the type of Managed Security Services ordered by Customer; both of which are available at <http://www.ibm.com/services/iss/wwcontracts>. The remedies specified in the document at this Web site are the exclusive remedies available for the service level agreements.

## **2.2.4 Maintenance**

Customer agrees to acquire and maintain IBM prescribed levels of maintenance for all Products and any other hardware and software products which IBM manages for Customer. The service level agreements will not apply for any period during which such maintenance is unavailable to IBM. Customer may purchase such maintenance through IBM or from third parties.

## **2.2.5 Customer Responsibilities and Reporting**

Managed Security Services do not include Internet access service or telecommunications transport circuits which are Customer's responsibility. Customer is responsible for its own network security policy and security violation response procedures. Customer consents to IBM collecting, gathering and compiling security event log data to look at trends and real or potential threats. IBM may compile or otherwise combine this security event log data with similar data of other clients so long as the data is compiled or combined in a manner that will not in any way reveal the data as being attributable to Customer.

# **3. Products**

## **3.1 Software**

### **3.1.1 Description**

Software, if any, is listed in the applicable Order. Software is owned by IBM or its licensors, is protected by copyright laws and international treaty provisions, and licensed (not sold). The Software is licensed under a separate IBM license agreement (i.e., the IBM International Program License Agreement available at <http://www-03.ibm.com/software/sla/sladb.nsf>).

### **3.1.2 Software Maintenance**

IBM will provide maintenance for Software during the period for which Customer has paid the applicable maintenance fees in accordance with its prevailing Maintenance and Support Policy available at <http://www.ibm.com/services/iss/wwcontracts>.

## **3.2 Appliances**

### **3.2.1 Description and License**

Appliances may be listed in the applicable Order. The license to use the pre-installed Software is only in conjunction with the Machine with which it is originally supplied. Such licensed Software may not be removed from the Machine. In connection with fulfilling an Appliance Order, IBM may deliver a new Appliance model in place of a model that is being phased out, or deliver a model with equal or greater functionality and performance in place of a model that is unavailable; provided that the delivered model meets or exceeds the Machine specifications of the replaced model.

### **3.2.2 Machine Warranty**

IBM warrants the Machine for one (1) year from the Machine's Date of Installation. The date on Customer's invoice is the Date of Installation unless IBM informs Customer otherwise. Should IBM determine that Customer's Machine needs replacement, IBM will provide a replacement Machine under IBM's Machine Exchange Service terms.

### **3.2.3 Appliance Maintenance**

Maintenance for Appliances includes (i) technical support for the Appliances, (ii) repair, replacement or advanced exchange of the Machine, and (iii) related Software security content updates, fixes and enhancements for the pre-installed Software during the period for which Customer has paid the applicable maintenance fees in accordance with IBM's prevailing Maintenance and Support Policy available at <http://www.ibm.com/services/iss/wwwcontracts>.

## **3.3 Compliance**

Customer shall provide written verification of its compliance with this Attachment within forty-five (45) days of IBM's written request. Upon thirty (30) days prior written notice, IBM may, at its own expense, appoint a nationally recognized software use auditor, to whom Customer has no reasonable objection, to audit and examine use and records at Customer's offices during normal business hours, solely for the purpose of confirming that Customer's use of the Software is in compliance with this Attachment. If such audit by Customer or IBM should reveal that use of the Software has been expanded beyond the scope of use and/or the number of devices specified in the applicable Order(s), IBM shall have the right to charge Customer the current list prices applicable to such expanded Software use.

## **4. General**

### **4.1 Compliance with Laws**

IBM will comply with laws applicable to IBM generally as an information technology service provider. Unless otherwise expressly agreed, IBM is not performing Customer's regulatory or management obligations and is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Attachment, or that IBM's provision of or Customer's receipt of, particular Products and Services under this Attachment meet the requirements of such laws.

Each party will comply with applicable import and export control laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain users.

### **4.2 Payment and Shipping**

All amounts are due and payable upon Customer's receipt of invoice. Customer agrees to pay accordingly, including any late payment fee. Payment is to be made by electronic funds transfer to an account provided by IBM or other means as agreed by both parties. Unless otherwise stated in an Order, all charges will be calculated and paid in US Dollars. If timely payment is not received, IBM reserves the right to suspend performance under this Attachment until payment is received.

For travel scheduled in advance with Customer's authorized representative, IBM will invoice actual travel and living expenses.

Unless otherwise specified in the Order, Software is delivered to Customer by supplying Customer with license key data. If Customer has not already downloaded the Software and documentation, it is available for download at <http://www.iss.net/download/>.

### **4.3 Disclaimers**

Products and Services are not warranted to operate uninterrupted or error free. New security threats are constantly evolving and no Product or Service designed to provide protection from security threats will be able to make network resources invulnerable. IBM accordingly does not warrant Customer's network against security threats, vulnerabilities, unsolicited e-mails and undesirable Internet content and makes only those warranties expressly stated in the Agreement and this Attachment. Products and Services are not fault tolerant and are not designed or intended for use in hazardous environments requiring fail-safe operation, including without limitation aircraft navigation, air traffic control systems, weapon systems, life-support systems, nuclear facilities, or any other applications in which Product or Service failure could lead to death, personal injury, or property damage. Customer acknowledges Products or Services for testing, assessing, scanning or monitoring the security of network resources, including implementation and deployment, may disclose or create problems in the operation of such resources; therefore, Customer

and its employees and agents represent and warrant that (i) they are fully authorized by Customer and the owners of the network resources to enter into this Attachment and each Order, and (ii) they and the owners of such network resources understand and accept the risks involved which in some circumstances could include without limitation, down time, loss of connectivity or data, system crashes or performance degradation. Customer understands and agrees that IBM does not make any warranty, express or implied, or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information provided as part of these Services.

#### **4.4 Consents**

Prior to Customer making facilities, software, hardware, networks or other similar resources available to IBM, Customer agrees to obtain any licenses or approvals for IBM or its subcontractors to use, access, and modify such resources to the extent necessary for IBM to provide the Products and/or perform the Services, including the development of any Materials. IBM will be relieved of its obligations to the extent Customer's failure to promptly obtain such licenses or approvals adversely affects IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Customer's failure to obtain these licenses or approvals, Customer agrees to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim.

#### **4.5 Term**

This Attachment will continue in effect indefinitely, subject to the right of either party to terminate as provided in the Agreement. Such termination will not, however, affect the applicability of the terms of this Attachment to any Order that has not yet been completed.

#### **4.6 Dispute Resolution**

Each party will allow the other a reasonable opportunity to comply before it claims that the other has not met its obligations relating to this Attachment or an Order. The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Attachment or any Order. Each party waives any right to a jury trial in any proceeding arising out of or related to any Order or this Attachment.

#### **4.7 Miscellaneous**

- a. This Attachment and any Order do not create an agency, joint venture, or partnership between Customer and IBM.
- b. The ownership rights and licenses granted to Customer under an Order are subject to Customer's applicable payment obligations.
- c. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Customer's business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with Customer.
- d. The failure of one party to insist upon strict adherence to any term of this Attachment, or any Order, on any occasion is not considered a waiver of such term, nor does it deprive that party of the right to insist on adherence later. Any such waiver must be in writing and signed (or accepted electronically) by an authorized representative of the waiving party.
- e. Customer is responsible for selecting the Products and Services that meet Customer's needs and the results obtained from the use of the Products, Services, and Materials, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- f. Where approval, acceptance, consent or similar action by either party is required under this Attachment or an Order, such action will not be unreasonably delayed or withheld.
- g. Changes to this Attachment will have no force or effect unless made in a writing expressly referring to this Attachment signed by each party's authorized representative.

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The Agreement, this Attachment and applicable Orders are the complete agreement between Customer and IBM regarding the Products and Services, and replace any prior oral or written communications between the parties. Accordingly, in entering into this Attachment (and each Order), neither party is relying upon any representation that is not specified in this Attachment or any applicable Order, including without limitation, any representations concerning 1) estimated completion dates, hours, or charges to provide any Product or Service; 2) the experiences of other customers; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party, on behalf of its Enterprise, accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Customer accept the terms in Orders by (i) signing by hand or, where recognized by law, electronically, (ii) using a Product or Service or allowing others to do so, or (iii) making any payment for a Product or Service. A Product or Service becomes subject to this Attachment when IBM accepts Customer's order by (i) sending Customer an Order form, or (ii) providing the Product or Service. Any Order will be signed by both parties if requested by either party.

Once accepted, (i) any reproduction of this Attachment made by reliable means (for example, photocopy, electronic image or facsimile) is considered an original and (ii) all Products and Services ordered under this Attachment are subject to it.

Agreed to:  
***{Customer Legal Name}***

Agreed to:  
***IBM Vietnam Company.***

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Agreement name:

Customer identification number:

Agreement number:

Customer address:

IBM address: