All references to IBM in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, IBM.”

Applicability
With the exception of ‘Datapower,’™ and ‘Internet Security Systems’™ (ISS) Products and Services, all IBM products shall be subject to the IBM Passport Advantage Terms and Conditions below.

Software licenses shall additionally be subject to the IBM Program License Agreement (“IPLA”) terms and conditions, located after the Passport Advantage Terms and Conditions.

In the event of conflict between the IPLA and Passport Advantage Terms and Conditions, the Passport Advantage Terms and Conditions shall control.

Terms and conditions for Datapower™ and ISS products are located after the IPLA terms and conditions, at the end of this document.

IBM PASSPORT ADVANTAGE TERMS AND CONDITIONS

Part 1 - General Terms

Under this IBM US Government Passport Advantage Agreement (“Agreement”), IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support selected Programs.

When used in this Agreement, “IBM” means the IBM company that is providing Eligible Products, and “you” means the Originating US Government customer (defined as an Agency or an affiliated entity of the US Government) that is ordering them, subject to the Agreement.

You and IBM agree to coordinate the administration of this Agreement within our respective Enterprises. IBM is the legal entity within International Business Machines Corporation’s Enterprise that accepts your orders. This Agreement is entered into with the understanding that each of us is bound by its terms. You accept the terms of this Agreement without modification by submitting an IBM Passport Advantage Enrollment Form and both of us agree to distribute copies of the Agreement to our respective Enterprise. “Enterprise” is defined in Section 2, Enterprise, below.

Products eligible under this Agreement (“Eligible Products”) include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement (“Non-IBM Programs”), Support for specified Non-IBM Programs and IBM Programs licensed under the terms of the IBM License for Non-Warranted Programs (“Selected Support”), authorizations to increase your use of a Program, IBM Trade-ups, Competitive Trade-ups, IBM Annual Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, annual Third Party Annual Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, and Selected Support renewals.

This Agreement is effective on the date IBM accepts your initial order for Eligible Products (“Effective Date”) and remains in effect until You terminate it in accordance with Section 11, “Agreement Termination.”

The terms of the sections of the IBM Program License Agreement (“IPLA”) entitled “Limitation of Liability,” “General,” and “Governing Law, Jurisdiction, and Arbitration,” are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

1. The term “Program” is replaced by the term "Eligible Product."
2. If not otherwise stated in the Limitation of Liability section of the IPLA, the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim for a fixed term license is 12 months’ charges.

If there is a conflict among terms in the various documents, those of an attachment prevail over this Agreement and those of an Associated Document prevail over both of those documents.
Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, you will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, you may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM’s prior written consent, which IBM will not unreasonably withhold.

The Passport Advantage “Anniversary” for the Government is October 1 of each fiscal year or the Government’s existing “Anniversary”, unless a different date is mutually agreed to in writing.

A “Program” is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A “Term” is the period that begins either on the date IBM accepts your contract/contract modification/order or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

1. Eligible Products
Eligible Products are for use within your Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Subscription and Support (as defined in (a) Software Maintenance of subsection 3 Software Subscription and Support below) **WITHOUT WARRANTIES OF ANY KIND.** However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

1. IBM Programs

**Proof of Entitlement:** IBM specifies a Program’s authorized use in a Proof of Entitlement (called “PoE”). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by your matching paid invoice or receipt, is evidence of your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter and to the extent permitted by agency regulation and not otherwise prohibited by applicable law, IBM has the right to verify your compliance with this Agreement on your premises during your normal business hours and in a manner that minimizes disruption to your business. IBM may use an independent auditor for this with your prior approval, which you will not unreasonably withhold.

**Versions and Platforms:** You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Program(s) that you obtain under this Agreement on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time you obtain it.

**IBM Trade-ups:** Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate your use of the replaced IBM Programs when you install the replacement Programs.

**Competitive Trade-ups:** Licenses for certain Programs that replace qualifying Non-IBM Programs (see Subsection 2, Non-IBM Programs, below) may be obtained for a reduced charge. You agree to terminate your use of the replaced Non IBM Programs when you install the replacement Programs.

**License:** IBM Programs obtained under this Agreement are governed by the terms of the IPLA. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document (“LI”), the terms of this Agreement prevail.
2. Non-IBM Programs

License: The licensing of a Non-IBM Program, if any, obtained under this Agreement is governed by the terms of the third party end user license agreement and such third party end user license agreement will be provided for prior review. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

3. Software Subscription and Support and Selected Support

(a) Software Subscription and Support
IBM provides software subscription and support (“IBM Software Subscription and Support”) with each IBM Program licensed under the IPLA. Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for Non-IBM Programs or for Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together “Selected Programs”). Third parties may provide software subscription and support (“Third Party Software Subscription and Support”) with Non-IBM Program licenses under the third parties’ terms. For purposes of this Agreement, “software subscription and support” means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While IBM Software Subscription and Support is in effect for an IBM Program license:
(i) IBM will make available to you and authorize you to use the most current commercially available version, release, or update, should any be made available.
(ii) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions (“Support”). Such Support for a particular version or release of a Program is available only until IBM or the third party, as applicable, withdraws Support for that Program’s version or release. When Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive Support. The IBM “Software Support Lifecycle” policy is available at http://www-306.ibm.com/software/info/supportlifecycle/.
(iii) IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. (This assistance is not available to your end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at ibm.com/software/support.
(iv) IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

(b) Selected Support
Selected Programs eligible for Selected Support are listed at www.ibm.com/lotus/PASelectedSupportPrograms. Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:
(i) IBM will make available to you Selected Program defect corrections, if any, that it develops.
(ii) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program’s version, release, or modification. When such Selected Support is
withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM “Software Support Lifecycle” policy does not apply to Selected Support.

(iii) IBM may provide you with assistance in designing and developing applications based on your subscription level.

(iv) IBM may provide assistance via telephone and electronic access, depending on your location and the subscription level you acquire. Such assistance is provided only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at ibm.com/software/support.

(v) IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

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IBM does not provide licenses under this Agreement for Selected Programs.

(c) Annual Renewal of Software Subscription and Support and Selected Support

You may renew your expiring software subscription and support or Selected Support by written authorization to renew prior to the expiration date, in accordance with the terms of this Agreement. IBM will renew, expiring software maintenance for all of Your Program licenses to the next Anniversary if IBM receives an order within seven (7) days after the Anniversary. Otherwise, your software maintenance will expire in accordance with the term of your order. If You do not renew Software Subscription and Support coverage for certain or all of Your Program licenses and at a later date You wish to again acquire Software Maintenance coverage for such Program licenses, You must also obtain IBM Software Subscription and Support Reinstatement.

Software subscription and support or Selected Support obtained or renewed on the Anniversary is renewable for an additional coverage period of 12 full months. Software subscription and support or Selected Support obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary. If you choose not to renew software subscription and support coverage for certain or all of your Program licenses and, at a later date, wish to again obtain coverage for any of those Program licenses, you must obtain IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

(d) Withdrawal of software subscription and support or Selected Support for a particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, you understand that

(i) IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and

(ii) if you renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM, will either continue to provide IBM Software Subscription and Support or Selected Support to you for that Program license until the end of the then current coverage period or you may obtain a prorated refund. If you renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party will continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. Otherwise, you may obtain a prorated refund.
4. Fixed Term Licensing
As an option, IBM licenses certain Programs for a “Fixed Term.” “Fixed Term” means that the duration of the license is
the limited term so designated by IBM in the Program’s PoE, beginning on the date that your order is accepted by IBM;
on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date,
as applicable. Software Subscription and Support is included with each Fixed Term license and is in effect until the Fixed
Term expires.

(a) Renewal of Fixed Term Licenses
You may renew your expiring Fixed Term License by written authorization to renew (e.g., order form, order letter,
purchase order), prior to the expiration date, in accordance with the terms of this Agreement. IBM will renew expiring
Fixed Term Licenses for all of Your Program licenses to the next Anniversary if IBM receives an order within seven (7)
days after the Anniversary. Otherwise, your software will expire in accordance with the term of your order. If You do not
renew Fixed Term Licenses for certain or all of Your Program licenses and at a later date You wish to again acquire Fixed
Term Licenses coverage for such Program licenses, You must obtain IBM Software Subscription and Support
Reinstatement. If you choose not to renew the Fixed Term License, you agree to discontinue use of the Program on the
expiration date. If, after the expiration date, you choose to resume use of the Program, you must issue a purchase order
associated with an initial Fixed Term License rather than a Fixed Term License renewal.

(b) Anniversary Coordination
For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the
Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to
extend the Fixed Term to the following Anniversary.

(c) Withdrawal of Fixed Term License for a particular Program
If IBM or the third party, as applicable, withdraws Fixed Term licensing for a particular Program, you understand that:
(i) you may not renew the Fixed Term License for that Program; and
(ii) if you renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will either (a) continue to
use the Program under the Fixed Term licensing terms until the end of the then current Fixed Term or (b) obtain a
prorated refund.

2. Enterprise
An Enterprise is the US Government Agency or affiliated entity of the US Government Agency. For purposes of this
contract, the U. S. Government Agency or affiliated entity of the US Government Agency shall mean
____________________ (NAME OF THE SPECIFIC ACQUIRING GOVERNMENT AGENCY to be included in
applicable order).

The US Government Agency awarding a contract and subsequent Purchase Order under such contract is the legal entity
that is authorized to execute and administer this Agreement.

3. Site
“Site” means any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary
or cost center, of your Enterprise. Your Site is defined as the “Originating Site.” Any Site that subsequently enrolls under
this Agreement is defined as an “Additional Site.” You are responsible for all Sites’ compliance with the terms of this
Agreement.

4. Obtaining Eligible Products
To obtain additional authorizations to use Programs under Passport Advantage you must have already obtained the
Program code. IBM’s “money-back guarantee” only applies the first time you license the IBM Program. If an IBM
Program license is for a fixed term that is subject to renewal, you may obtain a refund only if you return the Program and
its PoE within the first 30 days of its initial term. “CEO Product Categories” (groupings of Eligible Products) are
obtained on a per-user basis. You must obtain your first CEO Product Category ("Primary Product Category") for all Users within your Enterprise and for not less than the number of Users specified in the CEO Product Categories Table at ibm.com/software/passportadvantage. A “User” is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned. You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at ibm.com/software/passportadvantage. However, you need not obtain additional CEO Product Categories for all Users within your Enterprise. A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions
IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, you may continue to use the deleted Eligible Product but you may not exceed the number of Users enrolled prior to the deletion.

Increasing the number of Users
In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

Decreasing the number of Users
You will notify IBM in writing prior to your next Anniversary in the event your total number of Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, you may not renew IBM Software Subscription and Support on a CEO Product Category basis.

5. Reserved.

6. Mutual Responsibilities
To the extent not prohibited by applicable law, both of us agree that, under this Agreement:
1. all information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement; and
2. each of us may communicate with the other by electronic means 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 a “user ID”) contained in an electronic document is sufficient to verify the sender’s identity and the document’s authenticity.
3. IBM grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

7. Assignment
You may not assign this Agreement in whole or in part, without IBM’s prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a party or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

8. Reserved.
9. Agreement Termination
You may terminate this Agreement without cause on one month’s written notice.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

10. Geographic Scope
The terms of this Agreement apply in the United States, Puerto Rico and the District of Columbia.

11. Inspection/Acceptance – all IBM products
The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“IBM”) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within the warranty period; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
Program License Agreement Terms for One Time Charge Programs ("IPLA")

U.S. Government Terms

1. Definitions
"Authorized Use" is the specified level at which the Government is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

“License Information” ("LI") is a document that provides information specific to a Program. The Program’s LI is available at http://www.ibm.com/software/sla/. The LI may also be found in a file in the Program’s directory, by the use of a system command, or as a booklet that accompanies the Program.

"Program" - the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and documentation).

A “Proof of Entitlement” ("PoE") is evidence of the Government’s Authorization Use. The PoE is also evidence of the Government’s eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide the Government with a PoE, then IBM may accept the original invoice provided that it specifies the name of the Program and the Authorized Use obtained.

"Warranty Period" - one year, starting on the date the original Licensee is granted the license.

1. License Grant
The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold. IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that:
   a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
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   c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
   d. Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
   e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and
   f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)
This license applies to each copy of the Program that Licensee makes.

3.1 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups.
If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.
3.1.2 Updates, Fixes, and Patches
When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Fixed Term Licenses
If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee renews it by issuing a purchase order.

3.3 Term and Termination
This Agreement is effective until terminated by You. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges
Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.
If Licensee wishes to increase its Authorized Use, Licensee must issue a purchase order or contract modification, accordingly.

5. Reserved.

6. Money-back Guarantee
If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

7. Program Transfer
Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

8. Warranty and Exclusions
8.1 Limited Warranty
IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program. During the Warranty Period, IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Handbook for further information at www.ibm.com/software/support.
If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

8.2 Exclusions

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9. Licensee Data and Databases
To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes and unless otherwise agreed, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located). Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form.

10. Limitation of Liability
The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

10.1 Items for Which IBM May Be Liable
Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim. This limit also applies to any of IBM's Program
developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

10.2 Items for Which IBM Is Not Liable
UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

a. LOSS OF, OR DAMAGE TO, DATA;
b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

11. Compliance Verification
For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.
The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 Verification Process
Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.
Upon reasonable notice and to the extent permitted by agency regulations, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution
IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to work with IBM to “true-up” its account in accordance with the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq.

12. Third Party Notices
The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

13. General
a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and
IBM.

c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

e. Reserved.

f. Reserved.

g. Reserved.

h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.

j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.

k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

l. Reserved.
TERMS AND CONDITIONS FOR IBM DATAPOWER

Warranty period
WebSphere DataPower Appliance Hardware — One year
Pin Entry Device (PED) — One year
The battery and compact flash storage card in WebSphere DataPower Appliance are designated as consumables and, therefore, are not covered by this warranty.

Warranty service
With each appliance acquired, IBM includes one year of appliance support consisting of 9 hours per day, Monday through Friday, excluding holidays, next business day response. The initial period of maintenance can be upgraded by the purchase of warranty service upgrade or extended by the purchase of a renewal option, if available. If required, IBM provides repair or exchange service depending on the type of warranty service specified for the machine. IBM will attempt to resolve your problem over the telephone, or electronically by access to an IBM Web site. You must follow the problem determination and resolution procedures that IBM specifies. Scheduling of service will depend upon the time of your call and is subject to parts availability.
Service levels are response-time objectives and are not guaranteed. The specified level of warranty service may not be available in all worldwide locations. Contact your local IBM representative or your reseller for country-specific and location-specific information.

Service type
- Service type for the WebSphere DataPower Appliance is customer replaceable unit (CRU) (for example, fan module, power supply, or hard disk drive) Service and Machine Exchange Service.
- Service type for the Pin Entry Device (PED) is CRU Service.

CRU Service: IBM provides replacement CRUs to you for you to install. CRU information and replacement instructions are shipped with your machine and are available from IBM upon your request. CRUs are designated as being either a Tier 1 or a Tier 2 CRU.

Tier 1 CRU: Installation of Tier 1 CRUs is your responsibility. IBM may install a Tier 1 CRU at your request, if you issue a purchase order for the installation.

Tier 2 CRU: You may install a Tier 2 CRU yourself or request IBM to install it, at no additional charge. Based upon availability, CRUs will be shipped for next business day (NBD) delivery. IBM specifies, in the materials shipped with a replacement CRU, whether a defective CRU must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement CRU. You may be responsible for the replacement CRU if you do not return the defective CRU to IBM.
The following parts have been designated as Tier 1 CRUs:
- Hard disk drive
- Hard disk drive module
- Fan module
- Serial console cable
- Rack mounting kit
- Compact flash cover
- Power cord
- Power supply
- PED for HSM models

Machine Exchange Service: IBM will initiate shipment of a replacement machine to your location. You are responsible for its installation and verification of operation. You must pack the failed machine into the shipping container that contained the replacement machine and return the failed machine to IBM. Transportation charges, both ways, are paid by IBM. You may be responsible for the replacement machine if you do not return the failed machine to IBM.
Non-IBM parts service

**Warranty service:** IBM is now shipping machines with selected non-IBM parts that contain an IBM field replaceable unit (FRU) part number label. These parts are to be serviced during the IBM machine warranty period. IBM is covering the service on these selected non-IBM parts as an accommodation to their customers, and normal warranty service procedures for the IBM machine apply.

**Product consumable items**
The following consumable items are not warranted:
- Compact flash
- Battery

**Warranty service upgrades**
During the warranty period, warranty service upgrades provide an enhanced level of On-site Service for an additional charge. Service levels are response-time objectives and are not guaranteed.

IBM will attempt to resolve your problem over the telephone or electronically by access to an IBM Web site. You must follow the problem determination and resolution procedures that IBM specifies. Scheduling of service will depend upon the time of your call and is subject to parts availability.

**On-site Service:** IBM will repair the failing machine at your location and verify its operation. You must provide a suitable working area to allow disassembly and reassembly of the IBM machine. The area must be clean, well lit, and suitable for the purpose. The following on-site response-time objectives are available as warranty service upgrades for your machine. Available offerings are:
- 24 hours per day, 7 days a week, 4 hour average response

CRUs may be provided as part of the machine's standard warranty CRU Service except that you may install a CRU yourself or request IBM installation, at no additional charge, under one of the On-site Service levels specified above. For additional information on the CRU Service, refer to the warranty information.

**Maintenance Services**
If required, IBM provides repair or exchange service depending on the types of maintenance service specified for the machine. IBM will attempt to resolve your problem, over the telephone or electronically, via an IBM Web site. You must follow the problem determination and resolution procedures that IBM specifies. Scheduling of service will depend upon the time of your call and is subject to parts availability. Service levels are response-time objectives and are not guaranteed. The specified level of maintenance service may not be available in all worldwide locations. Contact your local IBM representative or your reseller for country-specific and location-specific information. The following service selections are available as maintenance options for your machine type.

**CRU Service:** If your problem can be resolved with a CRU, and depending upon the maintenance service offerings in your geography, IBM will ship the CRU for your installation. CRU information and replacement instructions are shipped with your machine and are available from IBM upon your request. Based upon availability, CRUs will be shipped for next business day delivery. IBM specifies, in the materials shipped with a replacement CRU, whether a defective CRU must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement CRU. CRUs are designated as being either a Tier 1 or a Tier 2 CRU.

Tier 1 CRUs: Installation of Tier 1 CRUs is your responsibility. IBM may install a Tier 1 CRU at your request, if you issue a purchase order for the installation.

For machines with On-site Same-day Response Service, IBM will replace a Tier 1 CRU part at your request, at no additional charge.

Tier 2 CRUs: You may install a Tier 2 CRU yourself or request IBM to install it, at no additional charge. The following parts have been designated as Tier 1 CRUs:
• Hard disk drive
• Hard disk drive module
• Fan module
• Serial console cable
• Rack mounting kit
• Compact flash cover
• Power cord
• Power supply
• PED for HSM models

Product consumable items
The following consumable items are not warranted:
  • Compact flash
  • Battery

Machine Exchange Service: IBM will initiate shipment of a replacement machine to your location. You are responsible for its installation and verification of operation. You must pack the failed machine into the shipping container that contained the replacement machine and return the failed machine to IBM. Transportation charges, both ways, are paid by IBM. You may be responsible for the replacement machine if You do not return the failed machine to IBM.

On-site Service: IBM will repair the failing machine at your location and verify its operation. You must provide a suitable working area to allow disassembly and reassembly of the IBM machine. The area must be clean, well lit, and suitable for the purpose.
Service levels are:
  • 9 hours per day, Monday through Friday, excluding holidays, next business day response
  • 24 hours per day, 7 days a week, 4 hour average response

Usage plan machine: No

IBM hourly service rate classification
Not applicable
Unless otherwise agreed to in writing, when a type of service involves the exchange of a machine part, the replacement may not be new, but will be in good working order.

Field-installable features: Yes

Model conversions: No

Machine installation: Customer setup. Customers are responsible for installation according to the instructions IBM provides with the machine.

Graduated program license charges apply: No

IBM Internet Security Systems™ Products and Services

This Attachment for IBM Internet Security Systems™ (“ISS”) Products and Services (“Attachment”) is between the Customer and the International Business Machines Corporation legal entity referenced below (“IBM”). This Attachment provides terms and conditions uniquely applicable to the acquisition of IBM Internet Security Systems branded Products and Services.

Capitalized terms not defined in this Attachment are defined in the Agreement.

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

Commencement – IBM’s acceptance of a signed and dated Order.

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.

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

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; 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 branded Software and/or IBM ISS branded 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.

Start of Services – the start of any work necessary to deploy or deliver the Customer’s Managed Security Services as outlined in an Order. Activities include, but are not limited to: project planning, equipment staging, delivery of Customer’s technical requirements, gathering of Customer data, and deployment or delivery of Services.

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 Start of Services
Managed Security Services will be provided for the duration specified in the applicable Order.

2.2.2 Renewal
IBM will notify Customer approximately 90 days prior to the expiration of the then-current term. Neither party will have any liability to the other for not renewing Managed Security Services. Customer may cancel the Managed Security Services at any time during the initial, or any renewal contract period by providing 60 days prior written notice. Upon cancellation, Customer agrees to pay IBM all Managed Security Services charges through the effective date of cancellation.

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

2.2.4 Service Level Agreements
During the period for which Customer has paid the applicable Managed Security Services charges, 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.

2.2.5 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.

2.2.6 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. To the extent permitted by agency regulations, 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 customers 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 separately.

3.1.2 Software Maintenance
IBM will provide maintenance for Software during the period for which Customer has paid the applicable maintenance charges.

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 order 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 charges.

3.3 Non-IBM Products
Use of Non-IBM Product(s) supplied hereunder, if any, will be subject solely to the manufacturer’s terms and conditions which will be provided to Customer prior to ordering. IBM will pass any Non-IBM Product warranties through to Customer to the extent IBM is authorized to do so.

3.4 Compliance
Customer shall provide written verification of its compliance with this Attachment within forty-five (45) days of IBM’s written request. To the extent permitted by agency regulations and 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 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), Customer shall work with IBM to “true-up” its account in accordance with the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq..

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 meets 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 Shipping
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, lifesupport 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 represents and warrants that (i) they are fully authorized to enter into this Attachment and each Order, and (ii) they 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.

4.5 Term
This Attachment will continue in effect indefinitely, subject to Your right 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 Reserved.

4.7 Miscellaneous
a. This Attachment and any Order do not create an agency, joint venture, or partnership between Customer and IBM.
b. Reserved.
c. Reserved.
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 its 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. 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. Each party, on behalf of its Enterprise, accepts the terms of this Attachment.
Support and Maintenance Policy for IBM Internet Security Systems™ Products and Services

IBM will provide technical support services and product maintenance (together “Support and Maintenance”) purchased by or on behalf of Customer during the period for which the applicable charges have been paid. Such Support and Maintenance may vary depending on the IBM Internet Security Systems™ (“IBM ISS”) Product(s) and Services purchased.

1. Definitions

   Business Day – Monday through Friday, excluding holidays.

   Error – a situation reported by or on behalf of a Customer where the IBM ISS Product does not function according to its current documentation.

   Fix – a repair or replacement of binary or executable code versions of the IBM ISS Product, to remedy an Error. Such repair or replacement includes corrections to the IBM ISS Product documentation.

   IBM ISS Product(s) or Product – the IBM ISS Software and/or IBM ISS Appliance(s) (which consist of IBM ISS Software pre-installed on a single IBM ISS hardware device supplied to Customer by IBM ISS).

   IBM ISS Software – software produced by or on behalf of IBM with the IBM ISS brand.

   Premium Support Engineer – assigned IBM ISS focal point for Support and Maintenance – Premium

   Technical Support Personnel – individuals who provide first, second, and/or third tier IBM ISS Customer support.

   Workaround – a change in Customer procedures, as recommended by IBM, to avoid an Error without substantially impairing use of the IBM ISS Product.

2. Support and Maintenance - Standard

   Support and Maintenance – Standard is comprised of the following elements.

   a. Telephone and Electronic Support

      IBM provides access to the IBM ISS online knowledgebase, and telephone and electronic support for all IBM ISS Products on a 24 hours/day by 7 days/week basis. This telephone and electronic support includes troubleshooting and Workaround assistance, and limited installation and configuration advice. If Customer education or consulting requirements are outside the scope of the limited installation and configuration advice available through the IBM ISS telephone and electronic support, IBM ISS may refer Customer to the IBM ISS Professional Security Services for assistance. The telephone and electronic support provided by IBM does not include support for software or machines developed by a third party.

      The IBM ISS online knowledgebase provides answers to many Customer questions. For those questions not answered by the knowledgebase, trained Technical Support Personnel are available to handle inquiries concerning use of the Product(s).

      The Technical Support Personnel will respond to questions, provide a reasonable level of guidance to Customer regarding the use of the Product, respond to reports of Errors and determine if the reported Error is a result of a problem in the operation of a Product, or an environmental or installation problem. Customer is responsible for providing information and documentation sufficient for IBM to reproduce the Error, including a detailed written description of the problem, log files, core dumps, data files, and any other information reasonably requested by IBM.

      The support provided by the Technical Support Personnel is provided for the most current and immediately preceding version(s) of IBM ISS Product(s). In some cases, resolving an issue may consist of advising Customer to upgrade to the most current version.

   b. Software Error Corrections
IBM ISS will use commercially reasonable efforts to correct Errors in the current version of the IBM ISS Software in a timely manner by providing the repair or replacement of object or executable code versions of the IBM ISS Software. Technical Support Personnel will endeavor to resolve suspected Errors at the time of the initial call or electronic response. If the Technical Support Personnel cannot resolve the matter during the initial call or electronic response, the request for service will be logged and the Technical Support Personnel will continue to investigate the incident. If the Technical Support Personnel cannot resolve the Error within a reasonable timeframe, the Error will be escalated to the IBM ISS Product engineering team to resolve the issue. Escalation timeframes may vary depending on the priority and severity of the Error. Customer may report a suspected Error, and designate its priority level to IBM ISS by telephone or electronically. Upon receipt of the report, the Technical Support Personnel will respond and provide a Fix or Workaround in accordance with the applicable level of priority assigned to the Error. IBM ISS reserves the right to reassign the designated priority level if necessary, based upon the nature of the suspected Error.

c. Hardware Error Corrections

Technical Support Personnel will diagnose the problem and attempt to resolve the issue with Customer over the phone. If appropriate, the Technical Support Personnel will instruct Customer to restore the Appliance hard drive image to its factory default settings by using the recovery CD included with the original Appliance shipment. To be eligible for Support and Maintenance - Standard, the Appliance must be in acceptable operating condition according to IBM ISS specifications, and at version levels supported by IBM ISS.

d. Advance Hardware Exchange

If the Technical Support Personnel determine the Appliance hardware is defective and must be replaced, IBM ISS will initiate an advance exchange of the defective hardware with replacement hardware. To enable IBM to proceed with shipment of replacement hardware, Customer must provide the following information: 1) Appliance serial number, 2) Customer name and ship-to address, and 3) name, phone number, and email address of the contact person at Customer’s location. Upon receipt of this information, IBM will issue a return merchandise authorization (“RMA”) number to Customer’s contact, and replacement hardware will be shipped to the specified Customer location. Replacement units may be new or refurbished hardware which meets or exceeds the specifications of the defective hardware. IBM will use commercially reasonable efforts to ensure that delivery of replacement hardware occurs within a reasonable time period.

Upon receipt of the replacement unit or components, Customer must return the defective unit or components in the shipping box and with the prepaid return shipping label provided, or using the freight service pickup coordinated through IBM. Customer must ensure that the returns are boxed and postmarked by the shipping company within five days of receipt of shipping materials. Defective hardware that is timely returned becomes the sole property of IBM upon its receipt. Customer’s license to use IBM ISS Software on the defective unit also terminates at such time. IBM is not responsible for Appliances returned without a valid RMA number.

e. Designated Customer Contacts

Access to the Technical Support Personnel by telephone or through the online customer support center is limited to Customer’s designated contacts. Support and Maintenance - Standard access is provided for up to four designated contacts. Assigning designated contacts ensures that only authorized personnel are able to adjust Customer’s security settings. Further, it allows Customer to manage support issues more efficiently by using a centralized approach. Customer must designate one contact as the primary designated contact (“PDC”). The PDC acts as the administrator for the designated named contact profiles, and can add or change named contacts online.

f. Security Content Updates
As part of Support and Maintenance – Standard, security content updates are periodically provided to Customer and may include security algorithms, checks, decodes and IBM ISS-related analysis of such information. Security content updates are made available for RealSecure® Software, Proventia® Software, and Proventia® Appliances (excluding the Proventia Network Multi-Function Security Appliance antivirus blade from Sophos) as part of the ongoing support and maintenance charge. Security content updates for Proventia Network Multi-Function antivirus blade from Sophos are made available as part of the charges paid for an annual content subscription. IBM makes new security content updates available to Customer for the most current version of the Products mentioned in this section. Security content updates for preceding versions may be made available to Customer according to the current IBM ISS Product Lifecycle Policy.

3. Support and Maintenance - Select
Support and Maintenance - Select includes all the benefits of Support and Maintenance – Standard, plus:

a. direct access to senior Technical Support Personnel; and
b. higher priority response targets.

4. Support and Maintenance - Premium
Support and Maintenance – Premium includes all the benefits of Support and Maintenance – Standard plus:

a. assignment of a designated Premium Support Engineer (PSE);
b. highest priority response targets as described in the “Classification of Errors and Response Times” section of this document;
c. up to two annual onsite visits by the Premium Support Engineer (up to three consecutive Business Days per visit, including travel expenses). Unused visits expire at the end of each annual support period;
d. up to one week (up to 40 hours) of onsite assistance with a PSE or equivalent. Hours must be used during a single visit and are subject to Business Day availability. Unused hours expire at the end of each annual support period;
e. two subscriptions to the X-Force® Threat Analysis Service for the term of the Premium contract. Such service is designed to provide personalized, up-to-date threat analysis and advance release of important security advisories; and
f. two additional designated contacts (for a total of six).

5. Version Upgrades
IBM makes software upgrades, improvements, and modifications available to Customer for the most current version of the IBM ISS Software, such as improvements in use and usability. IBM will provide Customer all such upgrades, improvements and modifications of the IBM ISS Software that IBM makes generally available to supported IBM customers and does not market as independent products or modules.

5.1 Classification of Errors and Response Times
Any suspected Error which is reported to IBM for IBM ISS Products is classified in accordance with the priority levels defined, below:

a. P1 - Critical Priority - A critical priority Error renders the IBM ISS Software inoperable or causes the IBM ISS Software to substantially fail. Examples of critical priority issues may include:
   (1) Blue screen;
   (2) Kernel panic;
   (3) File corruption;
   (4) Hanging program requiring reboot;
   (5) Network down situation; and/or
   (6) Critical hardware failure;
b. P2 - High Priority - A high priority Error substantially degrades the performance and/or causes serious limitations in the use of the IBM ISS Software. Examples of high priority issues may include:
(1) Lack of functionality as designed;
(2) Update failures; and/or
(3) Substantial performance degradation;

c. P3 - Medium Priority - A medium priority Error has minor impact on overall IBM ISS Software use. Examples of medium priority issues may include:
(1) Content or data format inconsistencies;
(2) Cosmetic issues;
(3) Enhancement requests;
(4) Information requests; and/or
(5) Documentation questions. Response time objectives are for IBM ISS Software Errors only. IBM will use commercially reasonable efforts toward ensuring that delivery of replacement hardware occurs within a reasonable period. IBM will make commercially reasonable efforts to do the following (see table):
6. Other Terms and Conditions

6.1 General
IBM is not responsible for errors or other problems due to non-IBM ISS Products or Services, misuse, accident, damage or modification, or failure to maintain proper physical or operating environment. If IBM reasonably believes that a problem reported by Customer may not be due to an Error, IBM will so notify Customer, and IBM shall not proceed further unless instructed to do so in writing by Customer.

6.2 Modification of Services
Should such modification reduce the scope or level of the Services being delivered (for example, eliminating previously provided Services or lengthening the security incident response time), IBM will provide a minimum of 30 days prior notice via the Portal or other electronic means. Customer may request that IBM defer the change effective date until the end of the then-current contract period for the Services by notifying IBM in writing within the 30 calendar days immediately following IBM's notice of such modification. The modification will then become effective when the Services are renewed.
6.3 Customer General Responsibilities

Customer agrees to:

a. obtain any necessary consents and take any other actions required by applicable laws, including but not limited to data privacy laws, prior to disclosing any of its employee information or other personal information or data to IBM. Unless otherwise prohibited by agency regulation, Customer also agrees that with respect to data that is transferred or hosted outside of the United States, Customer is responsible for ensuring that all such data transmitted outside of the United States adheres to the laws and regulations governing such data; and

b. be responsible for the identification and interpretation of any applicable laws, regulations, and statutes that affect Customer’s existing systems, programs, or data to which IBM will have access during the Services. It is Customer’s responsibility to ensure the systems, programs, and data meet the requirements of those laws, regulations and statutes. Customer understands and acknowledges:

c. that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of the Services; and

d. the Services are designed to provide monitoring and support of Agents across a variety of platforms and technologies. Such Agents must not be used for any other purpose while under management by IBM.

6.4 Mutual Responsibilities

IBM and Customer will each comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users, and each of us will cooperate with the other by providing all necessary information to the other, as needed for compliance. Each of us shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.