



IP Application Hosting (formerly Enterprise Hosting Services)

For purposes of this document, “Company” means International Business Machines Corporation including its applicable affiliates and subsidiaries (“IBM”).

- I. **SERVICES DESCRIPTION:** IP Application Hosting are comprised of the support, network connectivity, security and additional services, features, and hardware selected by Customer (individually and collectively, “IP Application Hosting”) and identified in a Customer-executed Service Agreement, IP Application Hosting Service Attachment, and a Services Order Form, as applicable. IP Application Hosting provides management in a Company Smart Center Facility of Company-provided or Customer-provided Internet servers, database servers and other hardware and software which access the Internet. Certain IP Application Hosting are provided via Akamai Services, which are defined in Section II – Definitions.

IP Application Hosting provides the following:

1. **Implementation Services.** Company provides the following Implementation Services:
 - installation, configuration and testing of operating systems, software RAID, Web and application servers and databases including memory, hard drives, CPUs, power supplies and fans; and,
 - performance of diagnostic tests to detect and resolve inconsistencies in connection with supported software and hardware.

2. **Monitoring and Support.** Company provides the following:
 - utilization of secure remote administration tools to access servers;
 - system troubleshooting for supported hardware and software;
 - diagnosis of problems affecting supported hardware and software;
 - performance of server reboots in the event of an operating system failure;
 - rebuilds of servers in the event that an unrecoverable failure caused by Company requires a server rebuild;
 - continuous monitoring and escalating of problems with the hardware, software and Smart Center Network;
 - identification and validation of alerts and the creation of cases to track the responses to the alert as appropriate;
 - provision of an e-mail to Customers informing of valid alerts as appropriate;
 - utilization of advanced correlation technology to filter out redundant alerts;
 - monitoring of the back-end and front-end network of the Smart Center;

- monitoring of Customer-provided network devices such as switches, routers, firewalls, load balancing and band-regulating devices that are located at a Smart Center;
 - provision of CPU utilization monitor, disk space utilization monitor, and primary IP address ping monitor for operating systems and HTTP port monitor, SSL port monitor, primary site URL Monitor, SSL site URL Monitor, POP & SMTP Monitors, web application availability for components; and,
 - provision to Customer of access to Client Central, the Company managed hosting portal.
3. Logical Security. Company provides the following;
- proactive logical monitoring of suspicious network activity, including the review of software security alerts, port scanning, internal scanning and network intrusion detection mechanisms to identify suspicious activity;
 - monitoring of industry authorities for new security alerts and the identification and evaluation of threats;
 - issuing of security advisories to customers for informational purposes only; and,
 - responding to threats including evaluation and application of security patches as appropriate.
4. Smart Center Facility. Company provides the following:
- maintenance of internal alarm systems that monitor the operational status of the Smart Center Facility systems and report any failures or anomalies to Company operations personnel;
 - maintenance and monitoring of security systems including biometric palm scanners (for certain areas) and color-coded, pin-protected badges, and the provision of closed circuit TV to prevent unauthorized entry or other physical security breaches;
 - on-site security guards 24 hours a day, seven days a week;
 - fire suppression services; and,
 - temperature controlled server areas.
5. Backups. Company provides system and content file recovery for all backed up data. An incremental backup is performed nightly and full backups are performed weekly. Backup tapes/disks are stored on-site for 14 days and offsite for 76 days. If a hardware failure requires a server rebuild, Company performs both the server rebuild and reloads the data using the most recent full backup tape/disk.
6. Maintenance Windows. Maintenance Windows are established time periods for conducting routine maintenance to the Smart Center infrastructure and the hardware and software used in providing services. Customers will be notified at least three



business days before any routine maintenance affecting IP Application Hosting is performed. Company also performs emergency maintenance procedures on an as needed basis. Most routine maintenance is performed during the hours of 11:00 p.m. and 3:00 a.m. local time to the Smart Center.

II. DEFINITIONS: In addition to the definitions found in Online Definitions, the following apply to IP Application Hosting:

“IP Application Hosting” may be referred to herein as the “Hosting Services”.

“Operational Date” is the date that Company provides access and/or access codes for the Hosting Services to Customer.

“Smart Center” or “Facility” is the Company’s physical location in which the hardware and software (including any that are customer-provided) used in providing the Enterprise Hosting Services is located.

“Services Order Form” is an order for IP Application Hosting or Akamai Services placed by Customer with its Company account representative attendant to an IP Application Hosting Service Attachment. The Services Order Form constitutes a binding commitment of Customer to purchase the requested Hosting Services and/or Akamai Services.

“Akamai Services” are Akamai’s services resold by Company pursuant to a reseller agreement. Akamai Services are not delivered to a Customer from a Smart Center, but over the Akamai Network. The following definitions shall apply solely with respect to Company’s provision of Akamai Services:

“Akamai Network” - Akamai’s worldwide network dedicated to web content delivery.

“Akamai Use Policy” - Akamai’s acceptable use policy, as amended from time to time, available at www.akamai.com.

“Customer Content for Akamai Services” - Any creation, renewal, update, deletion, editorial content, control, publication, reproduction, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects or an event, including any third party content or materials, originating or transmitted from any web site owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Akamai Network or otherwise provided to Akamai or transmitted or routed using any of the Akamai Services.

III. FEATURES AND OPTIONS: The following features and options are available for an additional fee:

1. Enhanced Monitoring Services. The following Enhanced Monitoring Services:

1.1 Custom Application Content Match Monitoring. Custom Application Content Match Monitoring verifies availability access time, and the content of a specific URL.



- 1.2 Custom Application File Monitoring. Custom Application File Monitoring tests size, age, and content of a file and issues notice in the event of a deviation.
 - 1.3 Custom Application File Log Monitoring. Custom Application File Log Monitoring searches for a string of characters in a log file and issues an alert when a match is made.
 - 1.4 Custom Application NT Service Monitoring. Custom Application NT Service Monitoring is available in two forms: 1) Service Up or Down – monitors whether service is down, if so an alert is issued, 2) Number of Instances – the monitors counts the number of Customer's services that are running and issues an alert if the count is unreasonably high or low.
 - 1.5 Custom Application Ping Monitor. Custom Ping Monitor verifies that specified hosts are available via the network to reasonably assure continuous availability of integral connections.
 - 1.6 Custom Application Port Monitoring. Custom Application Port Monitoring scans relevant port to determine whether it is open or closed to traffic.
 - 1.7 Custom Application Transaction Monitoring. Custom Application Transaction Monitoring tests the functionality of Customer's Website and carries installation fees based on the time and materials needed to facilitate the customer's needs.
 - 1.8 Custom Application Unix Processing Monitoring. Custom Application Unix Processing Monitoring is available in two forms: 1) Service Up or Down – the monitors detects if service is down, and if so issues an alert, 2) Number of Instances – the monitor counts the number of Customer's processes are running and issues an alert if the number is unreasonably high or low.
2. Long-Term Backup Retention. Long-Term Backup Retention is available for an additional fee. If Customer selects long term retention, Company will ship Customer's full backup tape to a secure off-site location for the period specified on the applicable Services Order Form.
 3. Akamai Services. Akamai's services are resold by Company pursuant to a reseller agreement. Akamai Services are not delivered to a Customer from a Smart Center, but over the Akamai Network.

IV. RATES AND CHARGES

1. Non-recurring and monthly recurring charges for IP Application Hosting and Akamai Services are set forth in a Services Order Form attached to Customer's service agreement or IP Application Hosting Service Attachment.
2. Customer is responsible for charges for any non-standard support services, such services to be billed at Company's then standard hourly rates which will be provided to Customer at the time such non-standard support services are requested.
3. Paper Invoice Charge applies.
4. Convenience Payment Charge applies.

V. **TERMS AND CONDITIONS:** In addition to the [Online Master Terms - Terms and Conditions of Service](#), the following apply:

1. **Akamai Services.** The following terms and conditions apply to Akamai Services:
 - 1.1 Customer acknowledges that Akamai owns all right, title and interest in and to Akamai Services and any intellectual property rights therein throughout the world. Customer acknowledges that the Akamai Services constitute proprietary and confidential information and trade secrets which are the sole and exclusive property of Akamai or its licensors and that the Akamai Services are or may be protected by patent, copyright, trade secret and/or similar laws and certain international treaty provisions.
 - 1.2 Customer acknowledges that its use of Akamai Services does not transfer or convey to Customer, or any third party, any right, title or interest in or to the Akamai Services, or any associated intellectual property rights throughout the world, but rather provides only a limited right of use, revocable in accordance with the terms below, the IP Application Hosting Service Attachment or the Service Agreement.
 - 1.3 Customer acknowledges and agrees that, for purposes of any indemnification rights Akamai is an intended third party beneficiary of Customer's indemnification of Company as it relates to Akamai Services.
 - 1.4 Customer agrees that the storage of Customer Content for Akamai Services does not create a bailment of such Content and neither Akamai nor Company shall be deemed a carrier, bailee or warehouseman of any Customer Content for Akamai Services under any circumstances. Customer is responsible for and assumes all liabilities arising out of or related to Customer Content for Akamai Services. Customer and Customer Content for Akamai Services must comply with the Akamai Use Policy and all applicable laws, regulations and ordinances. In the event Customer is or becomes aware that Customer or any Customer Content for Akamai Services actually or allegedly: (a) violates or infringes upon the intellectual property or other rights of any third party; (b) contains any libelous, defamatory, pornographic or obscene material; or (c) violates any laws, regulations, ordinances or rules applicable to Customer Content for Akamai Services- including, without limitation, Akamai's acceptable use policy – (each, an "Incident"), Customer shall promptly notify Company in writing and promptly take all steps necessary to stop and remedy such Incident, including, without limitation, removing Customer Content for Akamai Services from its origin server, removing the URL/tab from Customer Content for Akamai Services, and otherwise preventing Customer Content for Akamai Services from being routed to or passed through the Akamai Network. If Customer fails to perform any of the foregoing, Company may immediately suspend any of the Akamai Services to Customer and/or terminate this Addendum upon ten (10) days written notice. Notwithstanding anything herein to the contrary, if Company becomes aware that Customer or Customer Content for Akamai Services is in violation of the Akamai Use Policy, applicable laws, regulations or ordinances, then Company reserves the right to refuse to provide Akamai Services to the Customer, to take steps to prevent any Customer Content for Akamai Services from being routed to, passed through or stored on or within the Akamai Network, or take other necessary action as set forth in the Akamai Use Policy.

- 1.5 Customer acknowledges and agrees that an independent third party auditor (subject to confidentiality restrictions/obligations) shall have the right to access Company records pertaining to the resale of Akamai Services, for so long as Company and Akamai maintain their reseller Agreement and for a period of six months thereafter.
 - 1.6 In addition to any other indemnity obligations of the parties Customer shall defend, indemnify and hold harmless Company and Akamai or its officers, employees and contractors (each an "Indemnified Party" as it relates to the provision of Akamai Services) from and against any and all damages, costs, liabilities, and expenses (including court costs and reasonable attorneys' fees) to which an Indemnified Party becomes subject in connection with any claim, suit or proceeding related to: (a) any Customer Content for Akamai Services; (b) Customer web site(s) (including, without limitation, any activities or aspects thereof and commerce conducted thereon); (c) any violation of the Akamai Use Policy; (d) Customer's use of the Akamai Services; (e) any illegal, fraudulent or unauthorized use of the Akamai Services; and (f) Customer's willful misconduct. With respect to such claim, suit or proceeding, Akamai or Company, as applicable, shall: (x) promptly (and in any event no later than 15 business days after becoming aware of such claim, suit or proceeding) notify Customer, in writing, of the claim, suit or proceeding or the threat of such claim, suit or proceeding; (y) at Customer's reasonable request and expense, provide Customer with reasonable assistance for the defense of such claim, suit or proceeding; and (z) defer to Customer to have sole control of the defense of such claim, suit or proceeding and all negotiations for settlement or compromise, except that Customer shall not settle or compromise such claim, suit or proceeding without the prior written consent of Akamai and Company, which consent shall not be unreasonably withheld or delayed.
2. Addendums. Customer will abide by any terms specified in one of the addendums or end-user license agreements that may be applicable to the provision of IP Application Hosting and identified in the IP Application Hosting Service Attachment.
 3. Customer Content.
 - 3.1 Customer, not Company, has sole and exclusive control over the content provided by Customer or retrieved via Customer's website that resides on the hardware located at the Smart Center.
 - 3.2 Customer will promptly and thoroughly respond to any notices that the Customer Content violates the Digital Millennium Copyright Act, 17 U.S.C Section 101 et. Seq. ("DMCA") or any other law, rule or regulation.
 4. Customer Responsibilities.
 - 4.1 Hazards or Obstructions. Customer is responsible for eliminating any hazard, interference, or service obstruction caused by Customer actions or Customer's content ("Customer Materials"), is causing, or likely to cause. If Customer requests Company to assist it in removing any hazard, interference or service obstruction that the Customer Materials are causing, or is likely to cause, Company may, but is not required to, assist in such removal. Customer will pay Company's non-standard support charges in connection with such assistance at rates determined by Company at the time such services are requested.

- 4.2 Security. Customer is solely responsible for establishing and using any code, password, firewall rulesets or other means necessary to restrict access to its computers, servers, or other equipment connected through the IP Application Hosting. Customer is responsible for purchasing the necessary services to accomplish security in accordance with its technical or regulatory requirements.
 - 4.3 Upon expiration or termination of a Service Order Form, Customer is responsible for removing any customer-provided equipment from the Smart Center within thirty (30) days after the date of such expiration or termination. Any Customer-provided equipment not removed within thirty (30) days after the date of expiration or termination of the applicable Service Order will, at Company's option, conclusively be deemed to have been abandoned by Customer. Company may, upon written notice to Customer, apportion, sell, use, store, destroy, or otherwise dispose of the Customer-provided equipment without liability to Customer or any other person or entity. Customer will pay all reasonable expenses and costs incurred in connection with Company's disposition of the Customer-provided equipment.
5. Force Majeure. Any delay in or failure of performance by Company or Customer regarding the Service (other than a failure to comply with payment obligations) is not considered to be a breach of the Service Agreement if and to the extent caused by a force majeure. Market conditions and/or fluctuations (including a downturn of Customer's business) will not be deemed force majeure events. The party whose performance is affected by such events must promptly notify the other party, giving details of the force majeure circumstances, and the obligations of the party giving such notice will be suspended to the extent caused by the force majeure so long as the force majeure continues. The time for performance of the affected obligation hereunder will be extended by the time of the delay caused by the force majeure event.
6. Indemnity.
 - 6.1 Customer will indemnify Company for damages, costs and attorneys' fees that Company incurs from any claim arising from (a) Customer's online business policies and practices; (b) Customer's content; (c) Customer provided software and equipment; (d) Customer's use of the IP Application Hosting in any manner that is improper or illegal; (e) Customer's combination of the IP Application Hosting with other products or services not provided by Company; and (f) Customer's modification of the IP Application Hosting.
 - 6.2 Subject to any limitations that are specified in an IP Application Hosting addendum, Company will indemnify Customer for damages, costs and attorneys' fees that Customer incurs from any claim that the IP Application Hosting (not functionalities that are inherent to the use of the Internet) as provided to Customer by Company infringe any U.S. patent, copyright, trademark, trade secret or other intellectual property right under U.S. law. Notwithstanding the foregoing, this indemnification expressly excludes Customer's content, matters that arise from Customer's content or Customer's conduct, and matters that otherwise arise out of an infringement or misappropriation caused by Customer. "Customer's conduct" includes, but is not limited to, methods or processes (including, without limitation, the manipulation of data) performed by or on behalf of Customer to achieve the functionality or use desired by Customer of such IP Application Hosting. In the event of an infringement or a misappropriation as to



which this Section applies, then Company will, at no additional charge to the Customer, use commercially reasonable efforts to either: (a) procure for Customer the right to continue using such IP Application Hosting, (b) replace such IP Application Hosting with non-infringing IP Application Hosting, or (c) modify the same so as to make them non-infringing, or (d) in the event that (a), (b) or (c) is not achieved by Company using commercially reasonable efforts, the Agreement will terminate solely with respect to the infringing IP Application Hosting, and Company will refund to Customer any unused monthly recurring Charges paid for such IP Application Hosting. The party seeking indemnification shall give prompt notice of claims and shall cooperate in defending against the claim. The indemnifying party shall conduct the defense and shall have control of the litigation.

7. Maintenance. Company may perform any routine or emergency maintenance it considers necessary and appropriate that may limit or suspend the availability of the IP Application Hosting. Company will use electronic or other means to inform Customer seventy-two (72) hours prior to any routine maintenance activities, and will use reasonable efforts to perform routine maintenance during the hours of 11:00 p.m. to 3:00 a.m. local time of the Smart Center at which IP Application Hosting are being provided. Notwithstanding the foregoing, Customer may be entitled to defer any scheduled maintenance, with the understanding that any adverse effects to the IP Application Hosting related to such deferral shall be the sole responsibility of Customer. Customer will not be entitled to defer scheduled maintenance related to the Company network. Emergency maintenance is defined as maintenance which is required to be immediately applied (e.g., software patches required to fix an identified security issue) in order to maintain the security and integrity of the Smart Center from which the IP Application Hosting are being provided.
8. Term and Termination. The IP Application Hosting initial term commences on the Operational Date of each Order Form, and automatically renews on a month-to-month basis until terminated by either party upon thirty (30) days prior written notice. At the end of the initial term of each Order Form, each Order Form will be automatically extended (“Extended Term”) on a month-to-month basis until terminated by either party upon thirty (30) days prior written notice. Notwithstanding anything to the contrary in the Service Agreement, the Service Agreement will remain valid, enforceable, and effective and the Term (as defined therein) of the Service Agreement will be extended with respect to the Enterprise Hosting Service Attachment and the Order Forms thereunder until the effective date of termination of such Order Form(s).

VI. SERVICE LEVEL AGREEMENT

The Service Level Agreements (“SLA”) for IP Application Hosting are attached to the Hosting Service Attachment. The SLA sets forth Customer’s sole and exclusive remedies for any claim relating to IP Application Hosting, including any claim for a failure to meet any service level set forth in the SLA. Company’s records and data will be the basis for all SLA calculations and determinations. Notwithstanding anything to the contrary, the maximum amount of credit in any calendar month under the SLA will not exceed thirty (30) percent of the monthly recurring charges for the month in which the credit was incurred.