

## Services Description

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### Non-IBM Products Provided by IBM – Out of Band Modems

#### 1. Scope

On your behalf, IBM will place an order for the purchase of Non-IBM Products in support of an IBM services engagement.

IBM hardware, licensed software programs, and services must be acquired under separate agreement.

#### 2. Definitions

**Non-IBM Product** – third party hardware and/or pre-installed software supplied to you under the terms of this Services Description.

#### 3. IBM Responsibilities

On your behalf, and in conjunction with an order for either IBM Managed Security Services or IBM Professional Security Services, IBM will acquire the Non-IBM Products specified in the Schedule for IBM Managed Security Services (“Schedule”).

IBM is acting solely as a reseller in facilitating this transaction and has no ongoing obligations or liabilities related to such transaction. If you require a third party vendor’s warranty or services, it will be your responsibility to contact that third party vendor directly.

#### 4. Your Responsibilities

You understand and agree:

- a. that title to non-IBM hardware products will transfer to you once IBM receives payment in full for such products;
- b. that title to non-IBM software products remains with the product’s manufacturer or distributor. You agree to execute software license agreements with third party vendors for all software included in the products sold to you under this Services Description. If any software included in the products listed in the Schedule is licensed to you by a shrink-wrap license, you accept the terms of the applicable shrink-wrap license;
- c. that other than as specified in this Services Description, use of the Non-IBM Products supplied hereunder will be subject solely to the manufacturer’s terms and conditions;
- d. that support and maintenance for the Non-IBM Products is a prerequisite to the provision of the IBM services for which you have contracted. Obtaining such support and maintenance is your responsibility;
- e. to validate the system design, and selection and use of the Non-IBM Products and features specified under this Services Description;
- f. to be responsible for:
  - (1) receiving and signing for the Non-IBM Products at your designated location. Any visible shipping damage shall be immediately reported to the shipper and IBM;
  - (2) installation of the Non-IBM Products;
  - (3) determining that the Non-IBM Products, and the integration of such products, are in compliance with national building and installation codes and other laws and regulations, including product safety regulations;
- g. that all non-IBM hardware included in this order must be approved by IBM’s Product Safety Review Board. If any product does not meet IBM’s product safety specifications, IBM reserves the right to substitute an alternative product. This substitution, if any, will be managed through the Project Change Control Procedure, and may affect price, schedule, and other terms and conditions of the associated contract documents.
- h. that risk of loss passes to you at the manufacturer’s or third party vendor’s point of shipment. IBM will arrange for shipment of the Non-IBM Products at your expense. You acknowledge that:
  - (1) shipping dates are estimates only; and

- (2) the manufacturer may make delivery in installments, all installments to be separately invoiced and paid for by you when due per invoice, without regard to subsequent deliveries; and
- i. that IBM may terminate this order, upon written notice, should the relationship or discount structure change between IBM and the applicable third party vendor.

**5. Disclaimer**

PURSUANT TO THE IBM CUSTOMER AGREEMENT, IBM PROVIDES THE NON-IBM PRODUCTS "AS IS" AND WITHOUT WARRANTIES OF ANY KIND.