General Services Administration (GSA)
IT Schedule

Federal Supply Service
Information Technology (IT) Schedule
Equipment, Software, Services, and Finance/Lease

Contract Period: October 1, 2007 through September 30, 2012
SINS 132-3, 8, 12, 33, 50, 51, 52, 62

Contract No. GS-35F-4984H
5-Year Option Extension- *OPTION YEAR 2*
Updated through Refresh 23

Current products, prices and terms and conditions are available on our website:
www.ibm.com/easyaccess/gsa
or by calling us directly at 1-800-333-6705

IBM Corporation
6710 Rockledge Drive
Bethesda, Maryland 20817

CONTENTS

CHAPTER 1. GENERAL INFORMATION

CHAPTER 2. SPECIAL ITEM 132-3: LEASING

CHAPTER 3. SPECIAL ITEM 132-8: PURCHASE

CHAPTER 4. SPECIAL ITEM 132-12: MAINTENANCE AND REPAIR

CHAPTER 5: SPECIAL ITEM 132-33: PERPETUAL SOFTWARE LICENSE

CHAPTER 6: SPECIAL ITEM 132-50: CLASSROOM TRAINING

CHAPTER 7: SPECIAL ITEM 132-51: INFORMATION TECHNOLOGY PROFESSIONAL SERVICES

CHAPTER 8: SPECIAL ITEM 132-62: AUTHENTICATION SERVICES

CHAPTER 9: SPECIAL ITEM 132-52 ELECTRONIC COMMERCE SERVICES

APPENDIX A. OVERSEAS INFORMATION

APPENDIX B. CUSTOMER ENGINEERING MAINTENANCE SERVICES/PER CALL CHARGES (SIN 132-12)

APPENDIX C. IT SERVICES CHARGES

APPENDIX D. SERVICE OFFERINGS

APPENDIX E. RESERVED

APPENDIX F. MAINTENANCE AVAILABILITY STATUS

APPENDIX G. DESIGNATED MACHINES FOR GRADUATED CHARGES

APPENDIX H. RESERVED

APPENDIX I. SINGLE VERSION CHARGING

APPENDIX J. PR/SM CHARGE OPTION

APPENDIX K. MEASURED USAGE LICENSE CHARGE USAGE BANDS

APPENDIX L. PARALLEL SYSPLEX LICENSE CHARGES

APPENDIX M. ZSERIES WORKLOAD LICENSE CHARGES

APPENDIX N. S/390 USAGE PRICING CHARGES

APPENDIX O. EWLC, TWLC, ZELC, AND Z/OS.E LICENSE CHARGES

APPENDIX P. CALCULATION OF z/TPF MSUs

APPENDIX Q IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES

APPENDIX R EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z

APPENDIX S IBM PASSPORT ADVANTAGE AGREEMENT

Terms and Conditions Web Link Disclaimer

IBM references commercial web links in many of the appendices. These web links provide useful product information that pertain to offerings within the GSA Schedule Contract, however, the terms and conditions within these sites may not be applicable to the GSA Schedule. Should Terms and Conditions within the commercial websites conflict with those identified in the GSA Schedule, the Schedule terms will apply.

Quality Products and Services for All Your IT Needs

The IBM GSA IT Schedule is designed to save you time and money when procuring the information technologies you need. Whether it's a single workstation with basic application software, or an enterprise desktop management solution, the IBM GSA IT Schedule has the answer -with quality service and support for your IT infrastructure.

Total Solution Financing

New to the IBM GSA IT Schedule - Total Solution Financing. In addition to leasing and financing all types of IBM equipment available through the IBM GSA IT Schedule and our Business Partners' GSA Schedules, we've added the option of financing One-Time Charge Software and Fixed-Price Services. With terms of between 12 and 60 months, our Total Solution Finance offerings provide you with the flexibility you need to manage your requirements as you see fit while giving you the ability to finance all aspects of your IT requirements at competitive rates.

In addition, our Federal Installment Payment Agreement (FIPA) allows you to finance IBM equipment with attractive low interest rates. IBM's standard warranty covers equipment financed under this plan.

Industry-leading systems, software, and services

IBM's GSA IT Schedule is specifically designed to meet the changing IT needs of government customers. You'll find the latest hardware and software technologies on the IBM GSA IT Schedule, in addition to service offerings and flexible payment plans that can't be beat.

The IBM GSA IT Schedule also includes Expanded Professional IT Services, such as:

- Integrated Desktop Management
- IT Consulting - Education
- e-Business
- Systems Analysis and Design
- Project Management
- Implementation and Conversion Support
- Network and Image System Services
- Resource and Facilities Management
- Security

IBM can support any of your customized needs, including Seat Management and Web-Hosting, through our special item entitled Performance Based Services.

Even if it's not on the Schedule, it can still be in your order.

The IBM GSA IT Schedule is designed to be a one-stop shopping vehicle for all your IT needs. We try our best to make sure that the IBM GSA IT Schedule includes the broadest array of industry-leading hardware, software and service solutions. At times, however, you might need something that's not on the IBM GSA IT Schedule. That's OK. If you need something that's not covered, you can include incidental non-Schedule items with your delivery order.

Authorized Information Technology (IT) Schedule Pricelist

Federal Supply Service
General Purpose Commercial Information
Technology Equipment, Software and Services
Period: Valid through September 30, 2012

International Business Machines Corporation
IBM Government Systems
6710 Rockledge Drive
Bethesda, Maryland 20817
Telephone: 1-800-333-6705
www.ibm.com/easyaccess/gsa

Shop for System x Servers

FSC Classes

7010 Purchase of Equipment

- End User Computers/Desktop Computers
- Professional Workstations
- Servers
- Laptop/Portable/Notebook Computers
- Large Scale Computers
- Optical and Imaging Systems

7025 ADP Input/Output and Storage Devices Used Primarily Online)

- Printers
- Displays
- Network Equipment
- Communications Equipment
- Recognition Input/Output Devices
- Storage Devices, including Magnetic Storage, Magnetic Tape
- Storage and Optical Disk Storage

7030 Information Technology Software

- Large Scale and Microcomputer

7035 ADP Support Equipment

7050 ADP Components

D399	Other ADP Services
D301	IT Facility Operation
D302	IT System Development & Maintenance Service
D306	Systems Analysis Service
D307	Automated Information Systems Design and Integration Services
D308-1	Programming Services
D308-2	Millennium Conversion Services (Y2K)
D310	IT Backup and Security Services
D311	IT Data Conversion Services
D313	Computer Aided/Design/Computer Aided Manufacturing (CAD/CAM) Services
D316	Network Management Services
D317	Data/Records Management Services
D399	Other Information Technology Services, not elsewhere classified
N070	Installation, Deinstallation, Reinstallation for equipment under SIN 132-8
J070	Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts, Third Party Maintenance

USA Commitment to Promote Small Business Participation Procurement Programs

Preamble

IBM provides commercial products and services to the Federal Government. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

Commitment

- To actively seek and partner with small businesses.
- To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.
- To develop and promote company policy initiatives that demonstrates our support for awarding contracts and subcontracts to small business concerns.
- To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.
- To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.
- To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.
- To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in Federal Government contracts. To accelerate potential opportunities please contact IBM at 1-800-333-6705, or federal@us.ibm.com, or fax number, 1-888-520-0533.

CHAPTER 1 TABLE OF CONTENTS

CHAPTER 1. GENERAL INFORMATION 1

1. INFORMATION FOR ORDERING AGENCIES 1
1.1 Special Notice To Agencies: Small Business Participation 1
1.2 Geographic Scope Of Contract 2
1.3 Contractor's Ordering Address And Payment Information 2
1.4 Liability For Injury Or Damage 4
1.5 Statistical Data Government Ordering Ofc. Completion Of Standard Form 279 4
1.6 FOB Destination 5
1.7 Delivery Schedule 5
1.8 Discounts 6
1.9 State And Local Taxes 6
1.10 Trade Agreements Act of 1979, as amended 7
1.11 Statement Concerning Availability of Export Packing 7
1.12 Small Requirements 7
1.13 Maximum Order 7
1.14 Ordering Procedures for Federal Supply Schedule Contracts 7
1.15 Federal Information Technology/Telecommunication Standards Equipment 8
1.16 Federal Information Processing Standards Publications (FIPS PUBS) 8
1.17 Federal Telecommunications Standards (FED-STDS) 8
1.18 Contractor Tasks/Special Requirements (C-FSS-370)(Nov 2001) 9
1.19 Contract Administration For Ordering Offices 10
1.20 GSA Advantage 10
1.21 Purchase Of Open Market Items 10
1.22 Contractor Commitments, Warranties And Representations 11
1.23 Overseas Activities 11
1.24 Blanket Purchase Agreements (BPAs) 11
1.25 Contractor Team Arrangements 12
1.26 Installation, Deinstallation, reinstallation 12
1.27 Section 508 Compliance 12
1.28 Prime Contractor Ordering from Federal Supply Schedules 12
1.29 Insurance – Work On A Government Installation (Jan 1997)(FAR 52.228-5) 13
1.30 Software Interoperability 13
1.31 Advance Payments 13
1.32 Data Privacy 13
1.33 Privacy Act 14
1.34 Personnel 14
1.35 On-Line Information 14
1.36 Ordering 14
1.37 Term Of Orders 14
1.38 Price List Explanatory Notes 15
1.39 Third Party Products 15
1.40 Resale To Third Parties 15
1.41 Patent And Copyright Indemnity 15
1.42 Limitation Of Liability 17

1.43 Complete Agreement *17*
1.44 Mutual Responsibilities *18*
1.45 Other Responsibilities *18*
1.46 Definition Of Terms *18*

CHAPTER 1. GENERAL INFORMATION

1. INFORMATION FOR ORDERING AGENCIES

Note 1: All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

Note 2: Offerors and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services; FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

Note 3: This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performed by the publisher or manufacturer or one of their authorized agents.

1.1 SPECIAL NOTICE TO AGENCIES: SMALL BUSINESS PARTICIPATION

SBA strongly supports the participation of small business concerns in the Federal Supply Schedules Programs. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.fss.gsa.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Supply Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1.2 Geographic Scope Of Contract

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

[X] The Geographic Scope of Contract will be domestic and overseas delivery.

[ ] The Geographic Scope of Contract will be overseas delivery only.

[ ] The Geographic Scope of Contract will be domestic delivery only.

On a case-by-case basis IBM will deliver products and perform Services to overseas US Government locations which are in support of national or mutual defense operations (including US Embassies), and to locations which support the national interest of the United States (See Appendix A for details). IBM does not guarantee any support services (including installation, maintenance or warranty service) if IBM has not approved the Oconus location for each Government requirement.

1.3 Contractor's Ordering Address And Payment Information

Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

Contact	Phone Number
Classroom Training Inquiries	1-800-426-8322
Machines (except System X Server and Workstation Products) (SIN 132-8), Software (SIN 132-33) and Classroom Training (SIN 132-50) orders IBM Government Systems (including IBM Overseas Operations) Attn: CSO Federal Distribution Center 800 N. Frederick Avenue Gaithersburg, MD 20879 fednotes@us.ibm.com	1-800-333-6705 1-888-520-0533 (Fax)
Technical Assistance IBM Direct 7100 Highland Pkwy. Smyrna, GA 30082	1-800-426-2255 1-800-242-6329 (Fax)

Contact	Phone Number
System X Server and Workstation Products (132-8) Orders and Technical Assistance IBM 8123 S. Hardy Drive Tempe, AZ 85284	1 800 656 2596 1 888 520 0533 (Fax)
Maintenance (SIN 132-12); IT Professional Services, Machine Movement Service (SIN 132-51), Software Support Services (SIN 132-33) IBM Global Services Inside Sales 7100 Highland Pkwy. Smyrna, GA 30082	1-888-426-4343 1-800-426-7378 (Fax)
Warranty and Maintenance Repair Service (132-8) and SIN (132-12) Machines Service calls in the Continental US, Hawaii, Alaska and Puerto Rico	1-800-IBM-SERV
Repair Part (SIN 132-12) IBM Parts and Warranty Center Dept. E54 Fax: Post Office Box 9022 Boulder, Colorado 80301-9022	1-800-388-7080 1-800-766-6545

Payments should be directed to one of the following locations:

ACH Payments:

IBM Corporation

C/O PNC Bank Lockbox IBM# 643584
500 First Avenue
Pittsburgh, PA 15219
Attn: Lockbox IBM# 643584 (877)762-0830
ABA: 043000096 Acct#: 1017305745

Mail:

IBM Corporation
Lockbox 643584
PO Box 643584
Pittsburgh, PA 15264-3584

Other authorized users of the GSA Schedule may submit payments to the address as shown on the invoice.

Credit Card Orders

IBM will accept telephone orders of $250,000 or less (subject to the individual user's credit card limit) with payment made by Government commercial credit cards for acquisition of all products and services available under this Schedule.

To place a credit card order with IBM, a Government purchaser must call its IBM sales representative or the IBM Office shown elsewhere in this chapter and provide the cardholder's name and telephone number, the card type, account number and expiration date, and the products or services to be delivered.

Credit card transactions are not eligible for Prompt Payment Discounts.

The Government credit card program provides that invoices for credit card orders are not necessary; therefore, IBM will present such invoices to the Government only upon specific request for an individual order.

1.4 Liability For Injury Or Damage

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by Contractor unless such injury or damage is due to the fault or negligence of the Contractor, in which case liability will be in accordance with the limits stated at under the section "Limitation of Liability" of this Chapter.

1.5 Statistical Data Government Ordering Ofc. Completion Of Standard Form 279

Block 9: G. Order/Modification Under Federal Schedule

Block 16 DUNS number (except System X): 111410184

System X: 060790131

Block 30: Type of Contractor: C. Large Business

Block 31: Woman-Owned Small Business: No

Block 34: Reserved

Block 36: Taxpayer ID Number: 13-087-1985

Cage Code

The CAGE code for (non- System X Server and Workstation Product) orders placed at 800 N. Frederick Ave, Gaithersburg, MD is 49EQ3. The CAGE code for (System X Server and Workstation Product) orders placed at 8123 S. Hardy Drive, Tempe, AZ is 1VZC6.

Central Contractor Registration

IBM has registered with the Central Contractor Registration Database.

1.6 FOB Destination

All items are shipped FOB Destination within the United States (including Puerto Rico, Hawaii and Alaska). For shipments to other locations see Appendix A. Expedited delivery or special transportation requirements can be provided. Charges for such services are outside the scope of this contract. Excess storage charges, waiting time or overtime charges, and any charges associated with dry runs, rigging, the expediting of shipments and any special handling shall be paid by the Government. Machines shall be preserved, packed, and marked in accordance with IBM's standard practice. Packaging materials shall be the property of the Government. The Government shall pay any transportation costs incurred by IBM as a result of the Government's re-designation of the installation site after the initial shipment.

1.7 Delivery Schedule

a. TIME OF DELIVERY: The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
132-3	30 days or as agreed to with ordering activity
132-8	30 Days
132-12	As agreed to with ordering activity
132-33	30 Days (if delivery is required)
132-50	Public - per published course schedule
	Private - as agreed to with ordering activity
132-51	As agreed to with ordering activity
132-62	As agreed to with ordering activity

If the Government wishes a specific receipt/installation date, it should be included in the delivery order. If IBM is unable to meet the requested delivery date, IBM will contact the Government to each agreement for an alternative date.

b. When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

1.8 Discounts

Prices shown are NET Prices; Basic Discounts have been deducted.

a. Government Educational Institutions

Government educational institutions who meet IBM's guidelines for Educational Allowance may take advantage of the discounts offered under that program as transactions under this Schedule contract. Such discounts are based upon the commercial list prices in effect, and are not discounts off of the prices negotiated herein.

b. Prompt Payment Discount

Invoices, issued against delivery orders accepted under this contract, for Hardware Monthly Maintenance Charges, Maintenance Usage Charges, Annual Hardware Maintenance Charges, and Monthly/Annual License Charge (MLC/ALC) Programs are eligible for a prompt payment discount when paid promptly as set forth below, except when ordered via a Government credit card. See item titled "Credit Card Orders". Eligible invoices will be so annotated by IBM.

Paying offices are entitled to deduct a prompt payment discount of one percent (1.0%) of the invoice amount whenever payment of an eligible proper invoice received in the office specified by the Government is made on or before the twenty-fifth (25th) calendar day following the invoice date printed thereon. Whenever the twenty-fifth day falls on a Saturday, Sunday, or Federal holiday, payments made on the following business day will be considered qualifying payments for purposes of this discount. Payment shall be deemed to have been made on the date of the Government's check or on the date of the Government's wire transfer payment. Discounts taken which do not meet the foregoing criteria will be disallowed and will be re-invoiced to the applicable paying office. Eligible prompt payment discounts must be taken at the time the payment is made by the Government.

Agencies are reminded that the payment due date of this prompt payment discount is different from that of the Prompt Payment Act. Invoices not paid until the payment due date of the Prompt Payment Act will not qualify for this discount. In addition, failure to promptly renew orders for recurring charges disqualifies an agency from receiving the Prompt Payment Discount for the period prior to the delivery order's receipt by IBM. For example, if an agency provides a renewal delivery order on December 15, for monthly software charges and makes payment by December 25, Prompt Payment Discount may be taken for the entire month of December, but not for October and November.

1.9 State And Local Taxes

Notwithstanding the provisions of FAR 52.229-3, Federal, State and Local Taxes, January 1991, the Contract price excludes all State and Local taxes levied on or measured by the Contract or sales price of the services or completed supplies furnished under this Contract. Taxes excluded from the Contract price pursuant to the preceding sentence shall be separately stated on IBM's invoices and the Government agrees either to pay to IBM amounts covering such taxes or to provide evidence necessary to sustain an exemption there from. For purposes of any other state and local taxes the Government shall be considered the owner of the equipment upon installation. It shall be the Government's responsibility to provide a tax exemption certificate to IBM, where appropriate.

Refer to SIN 132-3, for applicable taxes on leasing.

1.10 Trade Agreements Act of 1979, as amended

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

1.11 Statement Concerning Availability of Export Packing

Export packing is available outside the scope of this Contract. Charges will be furnished upon request.

1.12 Small Requirements

There is $100 minimum dollar value limitation on orders placed under this Schedule, except within SIN 132-3, Leasing. IBM will lease transactions for products which have an aggregate purchase price value equal to or greater than $5,000.

1.13 Maximum Order

Maximum order threshold for Special Item Numbers are identified below.

SIN 132-3:	Leasing	$500,000
SIN 132-8:	Purchase	$500,000
SIN 132-12:	Repair Parts only	$10,000
SIN 132-33:	Perpetual SW	$500,000
SIN 132-50:	Training	$25,000
SIN 132-51:	IT Services	$500,000
SIN 132-62	HSPD-12 Services	$500,000

Notwithstanding these limits, agencies may place and IBM may honor orders exceeding these limits. Please refer to the section titled "Use of FSS IT Schedule Contract," within this Chapter for details on ordering procedures.

1.14 Ordering Procedures for Federal Supply Schedule Contracts

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all Schedules.

a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work

b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

1.15 Federal Information Technology/Telecommunication Standards Equipment

Ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering offices, shall be responded to promptly by the Contractor.

1.16 Federal Information Processing Standards Publications (FIPS PUBS)

Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication". Federal Information Processing Standards Publications (FIPS PUBS) are issued by the US Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703)487-4650.

1.17 Federal Telecommunications Standards (FED-STDS)

Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Supply Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

1.18 CONTRACTOR TASKS/SPECIAL REQUIREMENTS (C-FSS-370)(NOV 2001)

a. Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule

b. Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does not apply to travel and per diem charges.

NOTE: Refer to FAR Part 31.205-46 Travel Costs, for allowable costs that pertain to official company business travel in regards to this contract.

c. Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

d. Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

e. Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

f. Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

g. Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

h. Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.

i. Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.

j. Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

1.19 Contract Administration For Ordering Offices

Any ordering office, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of Termination as the GSA Contracting Officer under FAR 52.212-4 paragraphs (l) Termination for the Government's convenience and (m) Termination for Cause.

1.20 GSA Advantage

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

1. Manufacturer;
2. Manufacturer's Part Number; and
3. Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is http://www.fss.gsa.gov/

1.21 Purchase Of Open Market Items

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract.

For administrative convenience, an ordering office contracting officer may add items not on a Federal Supply Multiple Award Schedule (MAS) – referred to as open market items – to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if**:

1. All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
2. The ordering office contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
3. The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
4. All clauses applicable to items not on the Federal Supply Schedule are included in the order.

1.22 Contractor Commitments, Warranties And Representations

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

1. Time of delivery/installation quotations for individual orders;
2. Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
3. Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

1.23 Overseas Activities

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

Please refer to Appendix A for details.

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

1.24 Blanket Purchase Agreements (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

Orders placed under such agreements shall be issued in accordance with all applicable regulations and the terms and conditions of the contract. Additional terms and conditions may be added under a BPA, provided they're clearly advantageous to the Government, upon the mutual agreement of IBM and the agency. Any other changes to terms and conditions must be agreed to by GSA, IBM and the agency.

1.25 Contractor Team Arrangements

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract. For additional details on teaming with IBM, please call 1-800-333-6705.

1.26 Installation, Deinstallation, reinstallation

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

1.27 Section 508 Compliance

If applicable, Section 508 compliance information on supplies and services in this contract, are available by calling IBM's Federal Information Call Center at 1-800-333-6705.

1.28 Prime Contractor Ordering from Federal Supply Schedules

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and include a copy of the authorization letter with each order. Refer to FAR 51 for guidance. –

a. A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

b. The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

1.29 Insurance – Work On A Government Installation (Jan 1997)(FAR 52.228-5)

a. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds of minimum amounts of insurance required in the Schedule or elsewhere in the contract.

b. Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective –

a. For such period as the laws of the State in which this contract is to be performed prescribe; or

b. Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

c. The Contractor shall insert the substance of this clause, including this paragraph c, in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

1.30 Software Interoperability

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at **HTTP://WWW.CORE.GOV**.

1.31 Advance Payments

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract (31.U.S.C. 3324).

1.32 Data Privacy

The Government agrees to allow IBM and its Subsidiaries to store and use your contact information, including names, phone numbers, and business e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship and may be provided to contractors, IBM Business Partners, and assignees of IBM and its Subsidiaries for uses consistent with their collective business activities, including communicating with you (for example, for processing orders, for promotions, and for market research).

1.33 Privacy Act

All delivery orders that contain specific privacy requirements must be submitted by the Ordering Office directly to the Manager, GSA Schedules, IBM Corporation, 6710 Rockledge Drive, Bethesda, Maryland 20817, for the privacy requirements to be operative. Only if the delivery order is so submitted and IBM does not thereafter reject such order within 60 days of receipt, will provisions of the order with regard to obligations under the Privacy Act become applicable.

1.34 Personnel

IBM will be using professional service personnel to perform services procured hereunder.

1.35 On-Line Information

Information regarding this Schedule contract may be obtained thru GSA Advantage! on the Internet: http://www.gsa.gov. Current information about IBM products and prices, special promotions and contract terms and conditions is available on IBM's Home Page which is http://www.ibm.com/easyaccess/gsa.

1.36 Ordering

A written order, Electronic Data Interchange (EDI) Order, credit card order, fax, electronic order via a website, or in the case of funded BPAs, telephone orders, shall be the only basis for ordering under this contract unless otherwise provided in a Special Item. All written orders shall be time stamped upon receipt by IBM and the time-stamped date shall be considered to be the date of receipt unless the order shall have been sent by Certified Mail/Return Receipt Requested in which event the date of receipt shall be the date indicated on the certified mail receipt. At such time as the Government and IBM are EDI capable, EDI orders will be an acceptable basis for ordering under this contract.

All Government delivery orders and modifications to delivery orders will be considered to be accepted by IBM unless IBM rejects the order/modification in writing within thirty (30) days of its receipt unless otherwise indicated under SINs elsewhere in this schedule. Orders/modifications will not be signed or returned by IBM to the ordering agency.

1.37 Term Of Orders

Any order issued during the effective period of this contract may specify a period of performance that extends beyond the expiration date of this contract. IBM shall complete all schedule orders within the time specified in the order, or as mutually agreed between IBM and the ordering agency. Those task orders that have a period of performance beyond this contract will continue to be governed by all the terms and conditions in the contract and any other special ordering procedures pursuant to FAR Part 8.402.

1.38 Price List Explanatory Notes

Agencies should refer to the hardware, software and maintenance legends for an explanation of information provided in the corresponding price lists.

1.39 Third Party Products

For non-IBM Products including Programs, the manufacturer's product terms will apply, including, but not limited to warranty support, Patent and Copyright Infringement, and refund rights.

1.40 Resale To Third Parties

The Government agrees that it is acquiring machines under this contract with the intent to use them within the Government in support of Government operations and not for reselling, re-marketing, leasing, or transferring the machines (or components thereof) to a third party unless the Government is arranging lease-back financing for the machines, or has prior written consent from IBM.

1.41 Patent And Copyright Indemnity

For purposes of this Section, the term "Product" includes Materials, Machine Code and Licensed Internal Code.

If a third party claims that a Product IBM provides to the Government infringes that party's patent or copyright, IBM will indemnify the Government, its officers, agents, and employees against liability, at IBM's expense and pay all costs, damages, and attorneys fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Government:

A. Promptly notifies IBM in writing of the claim; and

B. Gives IBM such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The Government shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice.

Remedies

If such a claim is made or appears likely to be made, the Government agrees to permit IBM to enable the Government to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Government agrees to return the Product to IBM on IBM's written request. IBM will then give the Government a credit equal to:

1. For a Machine, the Government's net book value, provided the Government has followed generally-accepted accounting principles.

2. For a Program, the amount paid by the Government or 12 months' charges (whichever is less). If the Product is an IBM SaaS or subject to Fixed Term charges, up to twelve months' charges.
3. For Materials, the amount the Government paid IBM for the creation of the Materials.

This is subject to the Government's right to require continued use of the programs pursuant to the provisions of 28USC1498. In the event of such continued use, the Government shall notify IBM in writing of its election to continue use and agrees to undertake at the Government's expense the defense of any action against the Government and to indemnify IBM with respect to all costs, damages, and attorneys' fees attributed to such continued use after such notice is given to IBM; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM.

Claims for Which IBM is Not Responsible:

IBM has no obligation regarding any claim based on any of the following:

A. The Government's modification of a Product, or a Program's use in other than its Specified Operating Environment;

B. Anything the Government provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Government or by a third party on behalf of the Government;

C. The combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data , apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party;

D. Infringement by a non-IBM Product.

E. Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;

F. the distribution, operation, or use of the Product outside Government's Enterprise or for the benefit of any third party; or

G. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit the Government to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Patent and Copyright provision only applies to copies of the Product provided to the Government by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

These Patent and Copyright terms do not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

The foregoing states the entire obligation of IBM with respect to infringement of patents or copyrights.

1.42 Limitation Of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, the Government is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the Government is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable only for:

A. Payments referred to in IBM's Patents and Copyrights terms described herein;

B. Damages for bodily injury (including death) and damage to real property and tangible personal property; and

C. The amount of any other actual direct damages or loss, up to the greater of: (i) $100,000; OR (ii) the contract price (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials, Machine Code and Licensed Internal Code. Nothing in this subsection C shall limit the Government's right to (i) excess reprocurement costs in the event of a Termination for Default; or (ii) the contractual remedies prescribed under the Price Reductions clause (GSAR 552.238-75) (May 2004)(Alternate I- May 2003) and GSAR 552.215-72, Price Adjustment – Failure to Provide Accurate Information (Aug 1997).

D. For classroom training or education material, IBM is liable for the charges associated with the corresponding item provided.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Items for which IBM is not liable:

Under no circumstances is IBM, or its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

A. Loss of, or damage to data; or

B. Special, incidental, or indirect damages or for any economic consequential damages, or

C. Lost profits, business, revenue, goodwill or anticipated savings

D. Any third party claims against you except as described in the Patents and Copyrights section or as permitted by the Limitation of Liability section for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable

The parties acknowledge that nothing in this provision shall restrict the Government's statutory remedies in the event of fraud.

1.43 Complete Agreement

IBM's IT Schedule, its Published Terms, and any RFP, Proposal and Statement of Work issued against the Contract constitute the complete Agreement of the parties and supersede all prior communications, agreement or understandings on this subject.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled.

1.44 Mutual Responsibilities

Both of us agree that under this Agreement:

1. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;

2. Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;

3. Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;

4. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;

5. Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control;

6. Neither of us may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void.

1.45 Other Responsibilities

The Government agrees:

1. That this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as described in the Patents and Copyrights section or as permitted by the Limitation of Liability section for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable

2. That you are responsible for the results obtained from the use of the Products and Services; and

3. to provide IBM with sufficient, free, and safe access to your facilities and systems for IBM to fulfill its obligations.

1.46 Definition Of Terms

Note: The definitions and explanations noted here are an integral part of the terms and conditions of this Schedule.

Customer-Set-Up-Machine: Customer-set-up-machine is an IBM Machine that the Government installs according to IBM's instructions.

Data Processing System: The total complement of individual machines, containing one or more processors (listed herein as "processor," "processing unit," or "central processing unit") directly interconnected by IBM power and/or signal cables, and acquired to operate as an integrated group.

Designated Machine: the machine identified by the Government on which the Government intends to use a "ICA" Program for processing. The designated machine shall be identified by type, model and serial number on the Government's delivery order. When it is specified that the Government need not provide this identification to IBM, the term "Designated Machine" shall mean any machine on which the Government may use the "ICA" Program.

Equipment: An all-inclusive term which refers either to individual machines or to a complete data processing or word processing system.

Equipment Failure: A malfunction in the equipment, excluding all software and external factors.

Licensed Internal Code: (called "LIC") is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

Machine: is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide the Government.

Machine Code: Is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Materials: Education Materials, literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the Government as part of a Service. The term "Materials" does not include Programs, Machine Code or Licensed Internal Code.

Mechanical Replacement: The replacement of one machine for another occasioned by the mechanical condition of the machine being replaced.

Operational Use Time: That time during which the equipment is in actual operation and is not synonymous with power-on time.

Preventive Maintenance: That maintenance performed by IBM which is designed to keep the equipment in proper operating condition, and which, at IBM's option, is performed on a scheduled or unscheduled basis.

Product: A Machine or a Program.

Program ("Program" or "Licensed Program"): is the following, including the original and all whole or partial copies:

1. Machine-readable instructions and data;
2. Components
3. Related licensed materials,
4. Audio-visual content (such as images, text, recordings, or pictures) and
5. License use documents or keys, and documentation

The term "Program" includes an "ICA" Program, "Other IBM Program", and any non-IBM Program that IBM may provide to the Government. The term does not include Machine Code, Licensed Internal Code or Materials.

Types of Programs:

ICA Programs: those Programs licensed under the terms of Item 5.7 in SIN 132-33.

ICA Programs are perpetual licenses only to the extent that the government pays the monthly/annual license charges.

Other IBM Program: is an IBM Program licensed under the terms of IBM Program License Agreement (IPLA), Item 5.8 in SIN 132-33.

Remedial Maintenance: The maintenance performed by IBM which results from equipment failure and which is performed as required, and therefore, on an unscheduled basis.

Restricted Materials: Any licensed program materials which are labeled "Restricted Materials of IBM."

Service: Performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information data base) IBM makes available to the Government.

Specifications: a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications." For "ICA" Programs, Specifications are provided in a document entitled "Licensed Program Specifications."

Specified Operating Environment: shall mean the machine and programs with which a ICA Program is designed to operate, as described in the Program's specifications.

Transaction Documents: Documents used to confirm the specific details of the transaction. Examples of these documents include, but are not limited to, change authorizations (to an existing Service statement of work), and statements of work (outlines scope of Services, responsibilities, deliverables, completion criteria).

CHAPTER 2 TABLE OF CONTENTS

CHAPTER 2. SPECIAL ITEM 132-3: LEASING 1

TERMS AND CONDITIONS 1
LEASE TYPES 1
Option 1 1
1. Statement 1
2. Funding And Periods Of Leasing Arrangements 1
3. Discontinuance And Termination 2
Option 2 2
1. Leasing Price List Notice 2
2. Statement Of Government Intent 3
3. Lease Term 3
4. Lease Termination 4
LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS 5
1. Ordering Procedures 5
2. Assignment Of Claims 6
3. Peaceful Possession And Unrestricted Use 6
4. Commencement Of Lease 6
5. Installation And Maintenance 6
6. Monthly Payments 7
7. Lease End/Discontinuance Options 7
8. Upgrades And Additions 8
9. Risk Of Loss Or Damage 9
10. Title 9
11. Taxes 9
12. Option To Purchase Equipment (Feb 1995) (FAR 52.207-5) 9

CHAPTER 2. SPECIAL ITEM 132-3: LEASING

TERMS AND CONDITIONS

Terms And Conditions Applicable To Leasing Of General Purpose Commercial Information Technology Products (Special Item Number 132-3).

Note: Under SIN 132-3 Leasing of Products, there are two sets of terms and conditions. Option 1 does not contain a cancellation clause and all leases automatically expire on September 30th or sooner. Option 2 contains a cancellation clause, in which the fee must be in accordance with applicable legal principles. You may offer either option or both options.

LEASE TYPES

The Government will consider proposals for the following lease types:

a. Lease to Ownership,

b. Lease with Option to Own, and

c. Step Lease.

Orders for leased products must specify the leasing type.

OPTION 1

1. STATEMENT

a. It is understood by all parties to this contract that orders issued under this SIN shall constitute a lease arrangement. Unless the Ordering Office intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the product acceptance through September 30 of the fiscal year in which the order is placed.

b. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

2. FUNDING AND PERIODS OF LEASING ARRANGEMENTS

a. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:

1. The base period of an order for any lease executed by the Government shall be for the duration of the fiscal year. All Government renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the Government exercises its rights hereunder to acquire title to the product prior to the planned expiration date or unless the Government exercise its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the Government to a renewal.
2. All orders for leasing shall automatically terminate on September 30, unless the Ordering Office notifies the Contractor in writing thirty (30) calendar days prior to the expiration of such orders of the Government's intent to renew. Such notice to renew shall not bind the Government. The Government has the option to renew each year at the original rate in effect at the time the order is placed. This rate applies for the duration of the order. If the Government exercises its option to renew, the renewal order, shall be issued within 15 days after funds become available for obligation by the ordering office, or as specified in the initial order. No termination fees shall apply if the Government does not exercise an option.

b. Crossing Fiscal Years Within Contract Period. Where an Ordering Office has specific authority to cross fiscal years with annual appropriations, the Ordering Office may place an order under this option to lease product for a period up to the expiration of its period of appropriation availability, or twelve months, whichever occurs later, notwithstanding the intervening fiscal years.

3. Discontinuance And Termination

Notwithstanding any other provision relating to this SIN, the Ordering Office may terminate products leased under this agreement, at any time during a fiscal year in accordance with the termination provisions contained in FAR 52.212-4. (l) Termination for the Government's convenience, or (m) Termination for cause. Additionally, no termination for cost or fees shall be charged for non-renewal of an option.

Option 2

To the extent an Offeror wishes to propose alternative lease terms and conditions that provide for lower discounts/prices based on the ordering office's stated intent to fulfill the projected term of a lease including option years, while at the same time including separate charges for early end of the lease, the following terms apply. These terms address the timing and extent of the Government's financial obligation including any potential charges for early end of the lease.

1. Leasing Price List Notice

Contractors must include the following notice in their contract price list for SIN 132-3:

"The ordering office is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this price list prior to ordering and obligating funding for a lease."

2. Statement Of Government Intent

a. The Government and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the product for the term of the lease specified in such delivery order (the "Lease Term"). In that regard, the Ordering Agency, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the Ordering Agency's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment, specify the product being leased, and the required terms of the transaction.

b. Each ordering office placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the ordering office for the product or functionally similar product continues to exist and funds are appropriated. Contractor may request information from the ordering office concerning the essential use of the products.

3. Lease Term

a. The date on which the ordering office accepts the products is the Commencement Date of the lease. For acceptance to occur, the products must operate in accordance with the product's published specifications and statement of work. Acceptance shall be in accordance with the terms of the contract or as otherwise negotiated by the ordering office and the Contractor.

b. Any lease is executed by the Ordering Office on the basis that the known requirement for such product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12 month period. Defense agencies must also consider DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.

c. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the Government. All delivery orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the Government exercises its rights hereunder to acquire title to the product prior to such expiration date. The ordering office, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the product and/or software set forth in the original delivery order. Delivery orders under this SIN shall not be deemed to obligate succeeding fiscal year funds. The ordering office shall provide

the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.

d. Where an ordering office's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the ordering office may place a delivery order for a period up to the expiration of the Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstance.

4. Lease Termination

a. The Ordering Agency must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the Government's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.

i. The Government may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph (c) below). In any other event, the ordering office's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).

ii. The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph (d) below). In the event of termination for the convenience of the Government, the Government may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.

b. Termination for Convenience of the Government**:** Leases entered into under this option may not be terminated except by the ordering office's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), *Termination for Convenience of the Government.* The costs charged to the Government as the result of any Termination for Convenience of the Government must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made to date of termination plus the Termination Ceiling

c. Termination for Non-Appropriation: The ordering office reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the lease Term will be available to the ordering office. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the ordering office's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the product or functionally similar product; or (b) there is a continuing need, but adequate funds have not been made available to the ordering office in an amount sufficient to continue to make the lease payments. If this occurs, the Government will promptly notify the Contractor, and the product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.

d. Termination Charges: At the initiation of the lease, termination ceilings will be established for each year of the lease term. The termination ceiling is a limit on the amount that a Contractor may be paid by the Government on the Termination for Convenience of a lease. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the Government received for the work performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.

e. At the order level, the ordering office may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

Lease Provisions Common To All Types Of Lease Agreements

The following terms and conditions are applicable to any lease awarded under this contract regardless of type or option.

1. Ordering Procedures

a. When an Ordering Office expresses an interest in leasing a product(s), the Ordering Office will provide the following information to the prospective Contractor:

i. Which product(s) is (are) required.

ii. The required delivery date.

iii. The proposed lease plan and term of the lease.

iv. Where the product will be located.

v. Description of the intended use of the product.

vi. Source and type of appropriations to be used

b. The Contractor will respond with:

i. Whether the Contractor can provide the required product.

ii. The estimated residual value of the product (Lease with Option to Own and Step Lease only).

iii. The monthly payment based on the rate.

iv. The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.

v. A confirmation of the availability of the product on the required delivery date.

vi. Extent of warranty coverage, if any, of the leased products.

vii. The length of time the quote is valid.

c. The Ordering Office may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the Ordering Office does not issued a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

2. Assignment Of Claims

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The Ordering Office's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

3. Peaceful Possession And Unrestricted Use

In recognition of the types of products available for lease and the potential adverse impact to the Government's mission, the Government's quiet and peaceful possession and unrestricted use of the product shall not be disturbed in the event the product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The product shall remain in the possession of the Government until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased product by the Contractor will not relieve the Contractor of its obligations to the Government, and will not change the Government's duties or increase the burdens or risks imposed on the Government.

4. Commencement Of Lease

The date on which the Ordering Office accepts the products is the Commencement Date of the lease. Acceptance is as defined elsewhere in the contract, or as further specified in the order.

5. Installation And Maintenance

a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the Government to obtain installation and maintenance services from a qualified source. The Government may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The Government may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the Government to ensure that maintenance is in effect for the Lease term for all products leased.

b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

6. Monthly Payments

a. Prior to the placement of an order under this Special Item Number, the Ordering Office and the Contractor must agree on a “base value” for the products to be leased. For Lease to Ownership (Capital Lease) the base value will be the contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.

b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value: "5.25% plus current comparable term Treasury Constant Maturities as published in the Federal Reserve Statistical Release H.15." For Example: Lease factor one (1) percent over the rate for the three year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using “rate” functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The Ordering Office and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

d. The purchase option price will be the fair market value of the product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

Note: At the order level, ordering office may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the product or unamoritized principle. The methodology for determining lump sum payments may be identified in the pricelist.

e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level.

In the event the Government desires, at any time, to acquire title to product leased hereunder, the Government may make a one-time lump sum payment.

7. Lease End/Discontinuance Options

a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for NonAppropriation, the Government will return the Product to the Contractor unless the Government by 30 days written notice elects either:

i. to purchase the product for the residual value of the product, or

ii. to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased product. A new

residual value shall be negotiated for the extended lease and new lease payments shall be computed.

b. Relocation - The Government may relocate products to another location within the Government with prior written notice. No other transfer, including sublease, is permitted. Government shall not assign, transfer or otherwise dispose of any products, or any interest therein, or crate or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or it's assigns.

c. Returns:

i. Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the Government shall, at its own risk and expense, have the products packed for shipment in accordance with manufacturer's specifications and return the products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the products to good working order shall be at Government's expense.

ii. The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the product exceeds normal wear and tear.

iii. Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.

iv. With respect to software, the Government shall state in writing to the Contractor that it has:

1. Deleted or disabled all files and copies of the software from the equipment on which it was installed;
2. Returned all software documentation, training manuals, and physical media on which the software was delivered; and
3. Has no ability to use the returned software.

8. Upgrades And Additions

a. The Government may affix or install any accessory, addition, upgrade, product or device on the product ("additions") provided that such additions:

i. Can be removed without causing material damage to the product;

ii. Do not reduce the value of the product; and

iii. Are obtained from or approved by the Contractor, and are not subject to the interest of any third party other than the Contractor.

b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the Government shall remove any additions which:

i. Were not leased from the Contractor, and

ii. Are readily removable without causing material damage or impairment of the intended function, use, or value of the product, and restore the product to its original configuration.

c. Any additions that are not so removable will become the Contractor's property (lien free).

d. Leases of additions and upgrades must be co-terminus with that of the product.

9. Risk Of Loss Or Damage

The Government is relieved from all risk of loss or damage to the product during periods of transportation, installation, and during the entire time the product is in possession of the Government, except when loss or damage is due to the fault or negligence of the Government. The Government shall assume risk of loss or damage to the product during relocation, (i.e., moving the product from one Government location to another Government location), unless the Contractor shall undertake such relocation.

10. Title

During the lease term, product shall always remain the property of the Contractor. The Government shall have no property right or interest in the product except as provided in this leasing agreement and shall hold the product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The Government shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the Government shall have an encumbered license to use the software for the Lease Term. The Government's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the Government will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

11. Taxes

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. The Government will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1, State and Local Taxes, the Government agrees to pay tax or provide evidence necessary to support an exemption from the tax.

Note: For each individual order, the Contractor may propose additional terms and conditions (regarding SIN 132-3) for billings, payments, and/or invoices, as long as they are consistent with terms and conditions specified elsewhere.

12. Option To Purchase Equipment (Feb 1995) (FAR 52.207-5)

a. The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral

modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

b. Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

c. The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental".

CHAPTER 3 TABLE OF CONTENTS

CHAPTER 3. SPECIAL ITEM 132-8: PURCHASE 1

TERMS AND CONDITIONS 1
3.1 ORDER 1
3.2 TRANSPORTATION OF EQUIPMENT 1
3.3 INSTALLATION AND TECHNICAL SERVICES 1
3.4 INSTALLATION, DEINSTALLATION, REINSTALLATION 2
3.5 INSPECTION/ACCEPTANCE 2
3.5 ACCEPTANCE 2
3.6 WARRANTY 3
3.7 PURCHASE PRICE FOR ORDERED EQUIPMENT 5
3.8 RESPONSIBILITIES OF THE CONTRACTOR 5
3.9 TRADE-IN OF FEDERAL INFORMATION PROCESSING (FIP) EQUIPMENT 6
3.10 RISK OF LOSS OR DAMAGE 6
3.11 INSTALLATION 6
3.11.1 Customer Set-Up Machines: Group Z 7
3.11.2 Site Preparation 8
3.12 TERMS AND CONDITIONS FOR SYSTEM X SERVER AND WORKSTATION PRODUCTS AND SERVICES 8
3.12.1 IBM ServicePac for Warranty and maintenance Options (Warranty Service Upgrades – WSU) 8
3.12.2 Returns 11
3.12.3 Other Services 11
3.13 ADDITIONAL IBM TERMS 11
3.13.1 Electromagnetic Radiation 11
3.13.2 Ownership 12
3.13.3 Machine Code 12
3.13.4 Production Status 13
3.13.5 Invoicing / Payment 13
3.14 HARDWARE OFFERINGS 13
3.14.1 Capacity On Demand 13
3.14.2 IBM eServer On/Off Capacity On Demand 18
3.14.3 Attachment System z Capacity on Demand Offerings 22

CHAPTER 3. SPECIAL ITEM 132-8: PURCHASE

TERMS AND CONDITIONS

Note: These terms and conditions are applicable to the purchase of IBM Information Technology equipment. These terms are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) will (l) sell the machines and field installable model conversions (2) provide warranty service for the machines to all Federal agencies (as defined in Paragraph (b) of 40 USC 472), the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, (all of which are hereinafter referred to as the Government). Such sales will be made to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products to overseas U.S. Government locations which are in support of National or mutual defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

IBM makes no representation that machines, attachments, special features, accessories or engineering changes which may be announced in the future, will be suitable for use on, or in connection with, the machines purchased hereunder.

3.1 ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and for funded BPA's, telephone orders are permissible.

3.2 TRANSPORTATION OF EQUIPMENT

FOB Destination. Prices cover equipment delivery to destination, for any location within the United States (including Alaska and Hawaii) and Puerto Rico. For shipments to other locations see Appendix A.

3.3 INSTALLATION AND TECHNICAL SERVICES

When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering

activity's location, to install the equipment. Charges for additional training and services may be provided under SIN 132-51 of this Schedule

IBM's installation guidelines are specified in Item 3.11 of this Chapter.

3.4 Installation, Deinstallation, Reinstallation

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

3.5 Inspection/Acceptance

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

3.5 Acceptance

For newly installed machines: date of delivery to the location designated on the Purchase Order.

Not withstanding anything herein to the contrary, the parties agree as follows:

(i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

3.6 WARRANTY

The following warranty shall apply to IBM Machines , except when such Machines are relocated outside of the United States to a location where IBM is not providing such warranty services. **Warranty for IBM Machines**

For each IBM Machine, IBM warrants that it:

1. Is free from defects in materials and workmanship; and
2. Conforms to its Specifications

The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation. IBM identifies the warranty period in Appendix E of this pricelist (or for System X Server and Workstation, refer to http://www-1.ibm.com/services/us/index.wss/offering/its/a1001480) and in the product announcement letter. During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine.

If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, the Government may return it to IBM for a refund.

Warranty for Systems

When IBM specifies in its proposal that it is providing Products to the Government that are intended to operate together as a system, IBM warrants that those Products are compatible and when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM’s statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent there has been misuse, (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alterations of Machine or parts identification labels.

THESE WARRANTIES ARE THE GOVERNMENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM identifies Products that it does not warrant in the hardware pricelist or the IBM announcement letter.

Unless IBM specifies otherwise in a quote or proposal, IBM provides Materials, non-IBM products (including those provided with, or installed on, an IBM Machine at the Government's request), and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranty, service, support and refund rights, if any, for non-IBM Products are provided directly to the Government by their manufacturer or supplier, not IBM.

Warranty Details

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Government of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at the Government's location or a service center.

When the type of Service requires that the Government deliver the failing Machine to IBM, the Government agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to the Government at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Government's Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

The Government agrees to:

1. Obtain authorization from the owner to have IBM service a Machine that is not owned by the Government; and

2. Where applicable, before IBM provides Service -

    a. Follow the problem determination, problem analysis, and service request procedures that IBM provides,

    b. Secure all programs, data, and funds contained in a Machine, and

    c. Inform IBM of changes in a Machine's location

When Service involves the exchange of a Machine or part, the item IBM replace becomes its property and the replacement becomes yours. If, however, the Government wishes to retain the replaced parts for security purposes, the Government agrees to pay IBM's then current purchase price for any retained parts. The Government represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. The Government agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Some parts of IBM Machines are designed as Customer Replaceable Units (called "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to the Government for your replacement. The Government must return all defective CRUs to IBM within 30 days of receipt of the replacement one. The Government is responsible for downloading designated Machine Code and Licensed Internal Code updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Repair and exchange Service does not cover:

1. Accessories, supply items, and certain parts, such as batteries, frames, and covers;

2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by the Government

3. Machines with removed or altered Machine or parts identification labels;

4. Failures caused by a product for which IBM is not responsible;

5. Service of Machine alterations; or

6. Service of a Machine on which the Government is using capacity or capability, other than that authorized by IBM in writing.

IBM manages and installs applicable engineering changes that apply to IBM Machines and may also perform preventive maintenance.

IBM offers selected Warranty Service Options for System X Server and Workstation Products under this Contract, see " IBM ServicePac for Warranty and Maintenance Options (Warranty Service Upgrades - WSU" under the System X Server and Workstation Products terms.

Limitation of Liability
Except as otherwise provided by an express of implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

3.7 Purchase Price for Ordered Equipment

The price for a Machine or model conversion is the price shown in this Price List or as otherwise provided in a price quote from IBM to the Government (if an order is received during the specified validity period of the price quote). If IBM's established price for a Machine or model conversion has decreased, the Government shall have the benefit of the lower price as of the date of order receipt or the date of shipment.

3.8 Responsibilities of the Contractor

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

3.9 Trade-In Of Federal Information Processing (FIP) Equipment

When an agency determines that equipment will be replaced, the agency shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding Disposition of Information Technology Excess Personal Property in the Federal Property Management Regulations (FPMR) (41 CFR 101-46), and the policies and procedures on exchange/sale contained in FPMR 41 CFR part 101-46.

3.10 Risk Of Loss Or Damage

IBM bears the risk of loss or damage for each Machine up to the time it is delivered to the IBM-designated carrier for shipment to you or your designated location. Thereafter, the Government assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for you, covering the period until it is delivered to you or your designated location. For any loss or damage, you must 1) report the loss or damage in writing to IBM within 10 business days of delivery and 2) follow the applicable claim procedures.

3.11 Installation

The Government agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

IBM has standard installation procedures. IBM will successfully complete these procedures before IBM considers an IBM Machine installed, except for a Machine on which the Government has deferred installation, or a customer set-up Machine. If the Government defers installation, IBM will consider the Machine installed on the day IBM made it available for original installation.

The Government shall be responsible for installing a Customer-Set-Up (or Government-Set-Up or CSU or GSU) Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

Machines, Features, Conversions and Upgrades

As used in this section, the term "upgrade" includes, without limitation, features and conversions. IBM sell upgrades for installation on Machines, and in certain instances, only for installation on a designated serial numbered Machine. Within 30 days of the shipment of an upgrade, the Government agrees to install the upgrade or, if IBM is responsible for the installation, to allow IBM to install the upgrade.

The Government agrees to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine.

Many upgrades and engineering changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM . The Government is responsible for the return of all removed parts to IBM upon installation of the upgrade or engineering change. IBM reserves the right to invoice the Government for the price of the parts to be returned.

As applicable, the Government represents that it has permission from the owner and any lien holders to i) install upgrades and engineering changes and ii) transfer ownership and possession of removed parts to IBM. The Government further represents that all removed parts are genuine, unaltered

IBM makes no representation that a specific transaction may qualify for any particular tax or accounting treatment, whether that transaction is referred to as an upgrade, or if a Machine's serial number is retained despite a change being made to that Machine, or otherwise. The Government must make your own determination as to the tax or accounting treatment for each transaction.

Date of Installation

A. For an IBM Machine, for which IBM is responsible for installation:

a. The business day after the day IBM installs the machine, or if the Government defers installation, the day IBM has made the machine available for initial installation to the Government.

B. For a Customer Set-Up Machine:

a. Non System X Server and Workstation Products: The second business day after the machine's standard transit allowance period.

b. System X Server and Workstation Products: The date the Machine ships.

3.11.1 Customer Set-Up Machines: Group Z

The terms and conditions of this Special Item 132-8 shall apply, with the following modifications, to all orders for machines listed in this Price List with a Maintenance Group Z or when the product information specifies as a Customer Set-up machine.

3.11.1.1 Set Up Machine

A. Notwithstanding any other provisions of this Contract to the contrary, for these machines, the Government shall be responsible for performing the following:

1. Adequate site, system, and other vendor preparation.
2. Physical set-up, connection of cables to communications lines/modems and IBM machines incorporating Government access areas, customization, switch setting, and check-out.
3. Contacting IBM Service to make all non-CSU machine cable connections.
4. Notifying IBM of intent to relocate CSU machines covered by IBM for Maintenance, and following IBM instructions for relocation.
5. Using and following the problem determination procedures related to CSU.

6. Disconnecting, packing, and removing the CSU machine to the Government's shipping dock at the time of discontinuance. IBM will provide appropriate instructions and materials.

B. For machines delivered in conjunction with, and being setup as part of a host IBM system, the installation date shall coincide with that of the host.

3.11.2 Site Preparation

Site preparation specifications as set forth in IBM's physical planning installation manuals shall be furnished by IBM. These specifications shall be in such detail so that the equipment to be installed shall operate efficiently from the point of view of environment.

The Government agrees to have the installation site prepared at its own expense in accordance with IBM's written site specifications at least thirty (30) days prior to the installation date.

Any alterations or modifications in site preparation which are directly attributable to incomplete or erroneous environmental specifications provided by IBM and which would involve additional expenses to the Government, shall be made at the expense of IBM.

Unless specified otherwise in IBM's proposal, all arrangements for procurement, installation, maintenance of, and payment for non-IBM communication media (telephone, telegraph, etc.) necessary to the remote transmission of data are the responsibility of the Government. Any charges for such media in connection with installation, operation, or maintenance of machines shall be borne by the Government.

Physical planning assistance requested by the Government for initial installation of IBM machines, delivered by IBM, shall be provided at no additional charge, except in the case of Customer Set-Up machines. Physical planning assistance requested by the Government in connection with Customer Set-Up machines, or relocation, rearrangement, discontinuance, or reinstallation of systems or cables displaced as a result of new equipment installations may be obtained from IBM at additional cost.

3.12 Terms And Conditions For System X Server and Workstation Products and Services

3.12.1 IBM ServicePac for Warranty and maintenance Options (Warranty Service Upgrades – WSU)

These terms and conditions, and the supported product list are the complete and exclusive terms for your acquisition of warranty service upgrade (called “Service”) for both IBM Machines and selected non-IBM Machines (collectively called “Machines”). Additional information on the supported product list and service levels may be found at http://www-1.ibm.com/services/us/index.wss/offering/its/a1001480.

This Service is designed to keep your Machines in, or restore them to, conformance with their Specifications. We reserve the right to inspect a Machine within one month from the activation date of this Service. If the Machine is not in an acceptable condition for Service, we will notify you, terminate coverage, and refund your money. Service for non-IBM Machines is subject to availability of repair parts and technical support required from the original manufacturer. You may request that we use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge.

IBM will provide Service, either 9 hours per day 5 days a week (Monday through Friday,

excluding national holidays in the United States) during normal business hours, or 24 hours per day, 7 days per week as specified by the part number that you ordered. IBM will provide this Service only in the country of acquisition for Machines identified in the supported product list.

FOR IBM MACHINES, SERVICE IS AVAILABLE ONLY IF 1) FOR A WARRANTY SERVICE UPGRADE, IF IT WAS PURCHASED DURING THE MACHINE'S IBM INITIAL BASE WARRANTY PERIOD, AND 2) IN THE CASE OF 24x7x2 HOUR ON-SITE SERVICE IN THE U.S., THE MACHINE IS LOCATED WITHIN 50 MILES OF SELECTED METROPOLITAN LOCATIONS. (NOTE: CERTAIN REPAIRS TO A MOBILE MACHINE MAY REQUIRE SENDING THE MACHINE TO AN IBM REPAIR CENTER).

Service does not cover accessories, supply items, and certain parts, such as batteries, frames, and covers. In addition, this Agreement does not cover Service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of Machine or parts identification labels, or failure caused by a product for which IBM is not responsible. For non-IBM Machines, this Agreement also does not cover Machine installation, engineering change activity, preventive maintenance, microcode/firmware activity, or features and parts not supplied by the original manufacturer or IBM in performance of this Service.

TYPES OF SERVICE FOR MACHINES

IBM will provide repair or exchange Service either at your location, "called On-site," or at IBM's service center, "called EasyServ." Under On-site Service, if Service is required as determined by IBM, IBM will use reasonable efforts to respond as specified in the supported product list. Some parts of IBM Machines are considered Customer Replaceable Units (CRUs). IBM will ship these parts to you for your replacement. But for machines that IBM designates to be entirely CRU, IBM will ship such CRU parts as requested by customer even though customer had procured an on-site ServicePac upgrade. All defective CRUs must be returned to IBM. Under EasyServ Service, if Service is required as determined by IBM, you may deliver the failing Machine or ship it suitably packaged (prepaid, unless IBM specifies otherwise) to a location IBM designates, or IBM will use a courier to pick up and return the Machine as specified in the supported product list.

When a type of Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the Service status of the replaced item. Before IBM exchanges a Machine or part, you agree to remove all

features, parts, options, alterations, and attachments not under IBM's Service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange. IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

You agree to obtain authorization from the owner to have IBM service a Machine that you do not own. You agree to follow the instructions we provide and where applicable, before Service is provided: 1) follow the problem determination, problem analysis, and Service request procedures that we provide; and 2) secure all programs, data, and funds contained in a Machine.

You agree 1) that you are responsible for the results obtained from the Service; and 2) to provide IBM with sufficient, free, and safe access to your facilities for IBM to fulfill our obligations.

Your access to this Service will end either one, two, three, four or five years, as indicated by the part number that you ordered, from the date on your IBM Machine's sales receipt or your IBM Maintenance ServicePac's sales receipt, unless IBM informs you otherwise in writing. For a non-IBM Machine, your access to this Service will end either one or three years as indicated by the part number that you ordered, from the date you activate this Service.

IBM RETURN POLICY

You may cancel this ServicePac within 30 days and obtain a refund or credit. To qualify for this refund (or credit, if appropriate), you must call IBM at 1-800-426-7235 within 30 days after the date IBM delivers the ServicePac to you to obtain a return-authorization form. You must return the ServicePac information to an IBM designated location by the date IBM specifies. A copy of your invoice and the shipping label must accompany the return. Shipping and handling charges will not be refunded.

LIMITED WARRANTY

IBM warrants that it will perform Services using reasonable care and skill.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

GENERAL

Nothing in these terms and conditions affects any statutory rights of consumers that cannot be waived or limited by contract.

A copy of your invoice is your proof of entitlement to Service.

Both you and IBM agree that, under this Agreement, all information exchanged is non-confidential. If either you or IBM requires the exchange of confidential information, it will be made under a signed confidentiality agreement.

You agree to allow IBM to store your contact information, such as names, phone numbers, and e-mail addresses, in any country where IBM does business and to use such information internally and to communicate with you for the purposes of our business relationship.

Neither you nor IBM will bring a legal action, under this Agreement, more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

Neither you nor IBM is responsible for failure to fulfill any obligation due to causes beyond its control.

3.12.2 Returns

New, standard IBM Product, excluding IBM Workgroup Laser Printers and Multifunction (MFP) Options, may be returned for any reason within 30 days of the date of invoice and you may obtain a refund or credit. IBM does not provide refunds or credits for portions of a packaged offering provided at a single price. You may return the complete package for a refund or credit. To qualify for this credit or refund (as applicable), you must call your IBM customer support representation to obtain a return-authorization form. You must return the new IBM Product, including all documentation and accessories, intact and in its original packaging, to an IBM designated location by the date IBM specifies. A copy of the invoice, the return-authorization form, and the shipping label must accompany the return. Shipping and handling charges generally will not be refunded or credited. IBM Products authorized by IBM for return and returned without an IBM return-authorization form or returned after the date specified by IBM in the return-authorization form, may be subject to a restocking fee equal to 15% of the price paid. You agree to pay the restocking fee as IBM specifies.

This Returns policy does not apply to IBM Product(s) that you acquire for which IBM creates a unique machine type model (MTM) not generally available for purchase by all IBM customers or for IBM Workgroup Laser Printers and Multifunction (MFP) Options. For these printers and MTMs, IBM accepts returns only if the Product ships as a result of an IBM error, IBM will initiate a return of the Product with appropriate documentation at no charge to you if IBM is notified of the error within 30 days of the date of the invoice.

3.12.3 Other Services

IBM offers a variety of factory, shipping, installation, and implementation services for your xSeries Server and Workstation Products including, but not limited to Customization & Personalization, Asset Tagging, RAID Configuration, Rack Installation and Remote Technical Support. Please contact your IBM Sales Representative for additional details.

3.13 Additional IBM Terms

3.13.1 Electromagnetic Radiation

IBM makes no warranty or representation that any machine, special feature or accessory acquired by the Government under this contract will perform to any specific level or standard of

emanation suppression. Accordingly the Government shall be solely responsible for determining whether or not the machine, special feature or accessory meets the Government's emanation suppression requirements.

3.13.2 Ownership

IBM will transfer title to the Government upon shipment of the Machine. If the Government doesn't make timely payment or defaults on payment, title shall revert to IBM.

3.13.3 Machine Code

Certain Machines contain Licensed Machine Code ("LMC"), Licensed Internal Code ("LIC"), or separately provided licensed code ("SLC"). LMC, LIC and SLC are licensed under, and the Government's use is governed by, the terms of the license agreements provided with the LMC, The Government may obtain copies of these license agreements and any applicable product-specific environmental notices at http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting the Government's IBM representative. Authorization to use LMC, LIC and SLC is only for the number of processors, amounts of storage, or other quantities acquired by the Government.

Some Machine features, conversions, and upgrades consist solely of LIC, LMC or SLC, or of a modification to LIC, LMC or SLC. Title will not be transferred when IBM supplies features, conversions or upgrades which consist solely of LIC, LMC or SLC.

Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which the Government has acquired IBM's written authorization. The Government agrees to use Machine Code only as specified herein and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, the Government may not:

a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as IBM may authorize in the Machine's user documentation or in writing to the Government;

b. reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by law without the possibility of contractual waiver;

c. sublicense or assign the license for Machine Code; or

d. lease Machine Code or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns Machine Code including all copyrights in Machine Code and all copies of Machine Code (this includes the original Machine Code, copies of Machine Code, and copies made from copies). Machine Code is copyrighted and licensed (not sold).

The capacity of certain Machines is limited by technological measures in Machine Code. The Government agrees to IBM's implementation of such technological measures to limit Machine capacity.

Your acceptance of these GSA terms includes acceptance of IBM's applicable Machine Code license agreement and any product Addendum (if applicable for the product) provided with the Machine Code. Current versions of the IBM License Agreement for Machine Code and Addendum are accessible through the following URL: http://www-ibm.com/servers/support/machine_warranties/. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code that is supplied after such amended terms become effective. The Government may also review the above website for the list of Specific Machines LMC.

3.13.4 Production Status

Items purchased under Special Item 132-8 of this Contract will be newly Manufactured and may contain some serviceable used parts and/or features. In any event, IBM's warranty terms identified under "Warranty", shall apply.

3.13.5 Invoicing / Payment

The Government will be invoiced for products upon shipment.

In the event that the Government is of the opinion that any charges or credits on an invoice are not billed properly, every effort should be made to promptly pay the portion of the invoice not in question and give detailed written notice to IBM concerning the items in question.

3.14 Hardware Offerings

3.14.1 Capacity On Demand

Capacity on Demand is a offering which allows Government customers the ability to have "extra" processor capacity built directly in the Machine which can be activated in a quick, non-disruptive method. Terms and Conditions are stated below for the overall offering and for specific platforms.

Definitions:

Eligible Machine - an Machine configured to support Capacity Upgrade on Demand as specified herein.

Capacity - amount of resources, such as processor, storage, memory, channels, supporting the computing capability of a Machine.

On-Demand Capacity - Capacity installed in an Eligible Machine but not Activated for use.

Machine - an IBM machine, its features, conversions, upgrades, elements, or accessories, or any combination of them.

Activation/Activating - enabling of On-Demand Capacity for use.

Monitoring Program - a function licensed to the Government by IBM to monitor the Capacity being used on an Eligible Machine.

Test Period - a period of time specified herein, during which the On-Demand Capacity is Activated for the sole purpose of testing the Activation capability of an Eligible Machine.

Activation of On-Demand Capacity

Other than in connection with a Test Period, prior to or after the Government's Activation of any On-Demand Capacity on an Eligible Machine, you must 1) place an order for the upgrade associated with the Activation, including any associated Function Authorization upgrades applicable for that Eligible Machine within the period specified herein ("Order Placement Period") with IBM and, where specified within the Processor or Storage terms, and 2) give IBM access to the Eligible Machine. Giving IBM access to the Eligible Machine may require an outage.

The effective date of installation for Activated On-Demand Capacity is the date of Activation.

Should the Government Activate any On-Demand Capacity on a selected Eligible Machine and not place an order for it within the Order Placement Period specified herein, IBM reserves the right to directly invoice the Government, and you agree to pay, for the upgrade associated with the Activation as well as for any associated Function Authorization upgrades applicable for that Eligible Machine. IBM will invoice the Government based on the GSA price at the time of Activation.

Government's Responsibility

The Government agrees to the following:

1. The Government represents and warrants that, at the time of Activating On-Demand Capacity, you are the owner of the Eligible Machine or that you have the permission from the owner and any lien holders for the Activation to be conducted, as specified herein.

2. In addition to charges for the Activation of On-Demand Capacity, the Government also agrees to provide IBM a funded delivery order for any charges resulting from, or necessary for, the Activation, including those for requisite hardware, software, (for example, software license upgrades, including those which may result from Capacity Upgrade on Demand capability tests, if applicable) or services (for example, additional maintenance charges). The Government is responsible for contacting IBM regarding the applicability of associated charges and to obtain a price quote for these charges, prior to the Activation of On-Demand Capacity.

3. The Government agrees to notify any suppliers (for example, other software suppliers who license their product on a per-processor basis), as appropriate and necessary, when you Activate On-Demand Capacity.

4. IBM reserves the right to change the process by which On-Demand Capacity is Activated. The Government agrees to install and implement such a change on each applicable Eligible Machine.

5. The Government will install and implement Monitoring Programs or otherwise permit IBM to monitor the Capacity of each Eligible Machine, as specified herein. In the event IBM changes the means by which it monitors the Capacity of an Eligible Machine, the Government agrees to implement any such change, as necessary, for example, by installing and running a new Monitoring Program.

6. The Government agrees not to modify a Monitoring Program or in any way attempt to prevent or disable a Monitoring program or modify an Eligible Machine, such that IBM cannot accurately monitor the Machine's Capacity and Activation status.

7. If this offering terminates for an Eligible Machine, the Government will follow any termination provisions associated with that Eligible Machine, as specified herein.

8. The Government agrees not to circumvent technological measures intended to prevent unauthorized use of On-Demand Processors, or use a third party product to do so, or otherwise access or use unauthorized On-Demand Processors. The Government agrees to install, or allow IBM to install, changes to such technological measures if IBM determines such changes are appropriate.

Termination

This offering terminates for a specific Eligible Machine upon occurrence of any of the following:

1. The Government sells or otherwise transfers possession outside your Department or agency of the Eligible Machine, or any part of the Eligible Machine containing On-Demand Capacity.

2. You remove, disable or fail to install a Monitoring Program on the Eligible Machine.

3. IBM is prevented from monitoring the Capacity of the Eligible Machine.

4. Upon your one month's written notice to IBM.

The Government also agrees to give IBM, one month's written notice in the event that you anticipate termination under 1) or 2) above.

IBM will provide a one month's written notice to the Government in the event we terminate this offering.

Notwithstanding anything to the contrary in this Agreement, the Government's obligation for performance of this Agreement is contingent on the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the end of the fiscal year until funds are made available to the Contracting Officer for performance and until we receive notice of availability to be confirmed in writing by the Contracting Officer.

Warranty

Warranty terms are stated elsewhere within this Hardware section. The warranty period for On-Demand Capacity, including all associated parts, is based on the date On-Demand Capacity is physically installed, regardless of when or whether Activation occurs.

General Terms

Both of us agree that:

1. Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called as "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity. Commitments made by IBM or the Federal Government must be from an authorized signature.

2. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;

3. Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control;

4. Either of us may terminate this offering if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply;

5. Any terms of this offering which by their nature extend beyond the termination date remain in effect until fulfilled.

6. Capacity on Demand is offered only in the United States.

7. The Government grants IBM a purchase money security interest in the Eligible Machine, including any of its Capacity, features, conversions and upgrades, to secure any amounts that are due or become due under this offering.

8. This offering is comprised solely of On-Demand Products. The Government is responsible for providing all other computing resources (for example, memory, storage, channels) that may be required, adequate in type and quantity, to satisfy the needs of your computing environment. It is the Government's responsibility to contact IBM for additional product requirements.

3.14.1.2 Platform-Specific Terms (Storage)

Definitions

On-Demand Storage

Capacity, for example, disk, tape or other parts used for storage of data installed on an Eligible Machine but not Activated. On-Demand Storage is Activated, that is, enabled, when it is configured for use.

Capacity

Amount of resources, such as processors, storage, memory, channels, supporting the computing capability of a Machine.

Eligible Machine

An IBM Machine configured for Storage Capacity Upgrade on Demand, "Standby Capacity on Demand" or "A Step Ahead.". On-Demand Storage for an Eligible Machines is available only in 8-pack array increments.

Monitoring Requirement

The Government agrees to enable the IBM ESS Call Home function for each Eligible Machine in accordance with IBM’s documentation.

Activate/Activation/Activating

Enabling of On-Demand Storage for use.

Function Authorization

Enablement (technical or contractual) of a specific function on an Eligible Machine (for example, IBM's "ESS Advanced Functions", such as "Flashcopy") at a given Capacity level.

Termination

Upon termination, as defined herein, the Government agrees to order and pay for Activation of all On-Demand Storage on an Eligible Machine.

Activation Period of On-Demand Storage

The Government agrees to Activate all On-Demand Storage on an Eligible Machine within one year of the date On-Demand Storage is installed. The Government may defer this duty in increments of one year. For each one year increment that the Government defers Activation of all On-Demand Storage, the Government, prior to the next anniversary date On-Demand Storage was installed, a) install additional Capacity on the Eligible Machine, and b) purchase a renewal feature for that purpose. A funded delivery order must be issued to IBM prior to the one year expiration for the full amount remaining on the On-Demand Storage Machine or the additional capacity per the deferral.

The Government agrees to allow IBM reasonable access to an Eligible Machine when On-Demand Storage is no longer available on that Eligible Machine. This access is for the sole purpose of properly establishing the extent of all applicable Function Authorizations.

The Government agrees to Activate all On-Demand Storage on an Eligible Machine prior to upgrading that Eligible Machine to a new machine type of model.

This offering is comprised solely of On-Demand Storage. The Government is responsible for providing all other computing resources (for example, memory, processors, channels) that you may require, adequate in type and quantity, to satisfy the needs of your computing environment.

The Government understands that any requirement for the de-Activation or removal of a Function Authorization may require an outage of the associated Eligible Machine.

Test Period

None.

Order Placement Period

If the Government Activates any On-Demand Storage (other than for use in a Test Period), you agree to place an order for Activated On-Demand Storage with IBM prior to or within 14 calendar days following the Activation.

Built-in-Capacity and LIC

LIC does not include programs and code provided under separate license agreements, including but not limited to open source license agreements. An Eligible Machine may include computing resources or capabilities that are to remain inactive, or the use of which is restricted, until the right to access and use the resources or capabilities are acquired (call "Built-in-Capacity"). Examples of such computing resources and capabilities include but are not limited to processors,

memory, storage, and/or workload specific resources or capabilities (such as limitations on the use for a specific operating system, programming language or application). If you are the rightful possessor of an Eligible Machine, IBM grants you a license to use the LIC (or any replacement IBM provides) on, or in conjunction with, only the Eligible Machine for which the LIC is provided, and only to the extent of authorizations you have acquired for access to and use of Built-in-Capacity. You agree that if your use of Built-in-Capacity exceeds the authorizations you have acquired for the Eligible Machine, you will be liable to IBM for the full price of permanent, unrestricted use of the Built-in-Capacity at IBM's current list price.

Circumvention of Technological Measures

Built-in-Capacity is protected by certain technological measures. The Government agrees to IBM's implementation of such technological measures to protect Built-in-Capacity, including measures that may impact availability of data or performance of your Specific Machine. You may not circumvent such technological measures, or use a third party or third party product to do so, or otherwise access or use unauthorized Built-in-Capacity. In the event IBM determines that changes are necessary to the technological measures, IBM may provide you with changes to such technological measures. You agree, at IBM's option, to apply or allow IBM to apply such changes.

In addition, you acknowledge, authorize and agree to the following: Code or other measures introduced on an Eligible Machine that circumvents the technological measures designed to prevent unauthorized usage may result in the automatic power down of the Eligible Machine, reduced function of the Eligible Machine and/or the disablement of the Eligible Machine. A re-IPL (initial program load) or re-IML (initial microcode load) of the Eligible Machine (or other actions that may be disruptive) may be required to restore the Eligible Machine's operation.

3.14.2 IBM eSERVER ON/OFF CAPACITY ON DEMAND

1. Definitions

TCOD Machine	An IBM Machine that supports Temporary Capacity On Demand ("TCOD") (which may also be referred to in IBM literature or otherwise known as "On/Off Capacity Upgrade on Demand" or "On/Off CUoD") and for which IBM offers TCOD features.
On-Demand Capacity	Amount of resources, such as processors, storage, memory, channel, that is installed on a TCOD Machine but that is not enabled for use (e.g., On-Demand Processors)
Activation/Activated/Activate	Enabling On-Demand Capacity for use.
Temporary Capacity	On-Demand Capacity that may be Activated for a specified duration.
TCOD Unit	The duration and amount of Temporary Capacity that is Activated. For example, "Processor Days" (number of processors multiplied by the number of 24 hour periods and partial 24 hour periods Activated) are the TCOD Units

	measuring Activation of processors.
Requested Units	TCOD Units you specify when you Activate Temporary Capacity
Unreturned Unit(s)	TCOD Units that remain Activated after expiration of the duration you specified when you Activated Temporary Capacity.
Monitoring Program	Software IBM licenses to you that monitors requests for Temporary Capacity On Demand and reports Activated Temporary Capacity On Demand to IBM through a telecommunications connection, e.g. Electronic Service Agent.
TCOD Enablement Feature	A feature offered by IBM, which authorizes you to use Temporary Capacity On Demand according to the terms of this Attachment, and provides a key ("TCOD Enablement Code") to enable you to Activate and manage Temporary Capacity On Demand on the TCOD Machine.
TCOD Unit Maximum	A TCOD Enablement Feature's maximum number of TCOD Units available for Activation. Once this maximum is reached, you must obtain a new TCOD Enablement Feature in order to Activate additional Temporary Capacity On Demand.
TCOD Billing Quarter	A calendar quarter for which your Activation of Temporary Capacity On Demand is monitored for billing purposes.
TCOD Billing Feature	A feature used for billing purposes that specifies the IBM price for a TCOD Unit. The feature is orderable in the quantity of TCOD Units that are Activated during the TCOD Billing Quarter.

2. Use of Temporary Capacity On Demand

Government agrees:

a. It is liable to IBM for payment for each TCOD Unit (both Requested Units and Unreturned Units) on your TCOD Machine. This liability is discharged when the Government pays IBM for the TCOD Units. The amount due each TCOD Billing Quarter will be based on the TCOD Billing Feature, which specifies the quantity of TCOD Units Activated during that time period.

b. To issue a funded delivery order for the amount of the estimated TCOD Units to be used during the Activation period in order to initialize the TCOD Enablement Feature. It is the responsibility of the Government to monitor the funding on the order and to provide additional funding if TCOD Units are required beyond the amount estimated on the original order. Should the Government use TCOD Units beyond the estimated amount and an order is not placed prior to the end of the TCOD Billing Quarter, IBM reserves the right to directly invoice the Government, and you agree to pay, for the actual TCOD Units reported by the Monitoring Program, or as otherwise specified below.

c. That it will install (unless preinstalled), configure, and maintain the Monitoring Program on the TCOD Machine in a manner specified by IBM to regularly (at intervals as IBM specifies) report Activated TCOD Units to IBM. In circumstances where special security requirements preclude the use of the Monitoring Program, IBM will suspend this requirement. The Government will be required to deliver to IBM via facsimile or e-mail (as specified by IBM) a screen image of the TCOD Machine's screen entitled "DISPLAY TEMPORARY SYSTEM CAPACITY" once per calendar month. If the Government fails to submit the required information in a timely manner, you agree that IBM may treat this failure as if the Government disabled the Monitoring Program as described herein. In such circumstance, IBM may take all remedial measures specified, including but not limited to charging you for TCOD Units based on assumed 100% Activation during the period when reports are not submitted.

d. That, in the event the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TCOD Units to IBM, the Government will promptly notify its IBM service contact, and allow IBM or its agent to access the TCOD Machine to attempt to determine the TCOD Units for which you are liable;

e. That in the event that (a) the Government removes, disables, disconnects, or otherwise prevents the Monitoring Program from accurately reporting TCOD Units to IBM, or (b) the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TCOD Units to IBM and the Government fails to notify IBM service and allow access as described in the previous paragraph, then it will be liable for, and agree to pay for, TCOD Units based on the assumption that 100% of Temporary Capacity On Demand was Activated during the entire period for which the Monitoring Program did not report TCOD Units. IBM retains all other remedies it may have in the event of such actions, including termination of your right to use Temporary Capacity;

f. To provide access to the TCOD Machine for IBM to perform random audits pertaining to Activation of Temporary Capacity On Demand.

g. That the Government will not circumvent technological measures intended to prevent use of unauthorized On-Demand Capacity, or use a third party or third party product to do so, or otherwise Activate or use unauthorized On-Demand Capacity.

3. Government's Additional Responsibilities

The Government agrees to the following:

To represent and warrant that, at the time Temporary Capacity On Demand is requested, it is the owner of the TCOD Machine for which the request is made, or that it has the permission from the owner and any lien holders for the use of Temporary Capacity On Demand to be conducted as specified in this Attachment.

a. To notify any suppliers (for example, other software suppliers who license their product on a per-processor basis), as appropriate and necessary, when you make a request for Temporary Capacity.

b. In addition to charges for the Activation of Temporary Capacity On Demand, you also agree to pay any charges resulting from, or necessary for, the Activation, including those for requisite hardware, software, (for example, software license upgrades) or services (for example, additional maintenance charges).

c. IBM reserves the right to change the process by which Temporary Capacity On Demand is made available for the Government's use. You agree to install and implement such a change on each applicable TCOD Machine.

d. In the event IBM changes the Monitoring Program or the means by which it monitors Activated TCOD Units, the Government agrees to implement any such change, as necessary.

e. This offering is comprised solely of the computer resource identified as On-Demand Capacity. The Government is responsible for providing all other computing resources (for example, memory, storage, channels) that you may require, adequate in type and quantity, to satisfy the needs of your computing environment.

4. Termination

1. The Government's right to use Temporary Capacity On Demand terminates for a specific TCOD Machine upon occurrence of any of the following:

a. You transfer possession of the TCOD Machine, or any part of the TCOD Machine containing On-Demand Capacity to a third party (for example, return of the TCOD Machine to the leasing company at lease end). You agree to provide IBM at least one month written notice prior to such transfer.

b. At your option, provided you provide one month's written notice to IBM. Notification shall also be provided to IBM at fiscal year end if the Government does not require the use of the Requested Units ordered; otherwise, a funded order for those remaining Units is required for the new fiscal year.

c. At IBM's option, if IBM is prevented from, or unable to: 1) monitor (through use of the Monitoring Program) TCOD Units or 2) perform random audits of the TCOD Machine.

2. In addition to the foregoing, either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

3. Your right to use Temporary Capacity On Demand terminates for all TCOD Machines upon termination of this Agreement.

4. In the event of termination of Temporary Capacity On Demand for one or more TCOD Machines, you agree to provide IBM access to each such TCOD Machine to disable the TCOD Enablement Feature. If you transfer possession of a TCOD Machine without providing IBM access to disable the TCOD Enablement Feature, you agree:

a. to immediately pay to IBM, at the time of transfer, for all Temporary Capacity On Demand that remains available for Activation by means the TCOD Enablement Feature transferred with the TCOD Machine up to the TCOD Unit Maximum.

b. to pay for any Unreturned Units, in excess of the TCOD Unit Maximum, that may result from the TCOD Enablement Feature, transferred with the TCOD Machine, that has not been disabled by IBM.

5. Warranty

Standard IBM warranty terms apply. The warranty period for On-Demand Capacity, including all associated parts, is based on the date capacity is physically installed on a TCOD Machine, regardless of when or whether requests for Temporary Capacity On Demand are ever made.

3.14.3 Attachment System z Capacity on Demand Offerings

Terms and Conditions for the System z COD offering apply to the z10 and future System z product announcements.

The terms stated herein for IBM System z Capacity on Demand Offerings ("CoD Attachment") govern IBM's provision and Customer's acquisition and use of IBM System z Capacity on Demand Offerings. When used in the terms below, "Customer" means the Originating US Government customer (defined as an Agency or an affiliated entity of the US Government) that is acquiring the IBM System z Capacity on Demand Offering, subject to the Agreement.

1. Associated Attachments

This CoD Attachment provides terms that apply in general to all IBM System z Capacity on Demand Offerings. Additional terms are set forth in one or more Associated Attachments which govern each specific Capacity on Demand Offering. The terms of this CoD Attachment apply only when Customer has contracted for a Capacity on Demand Offering under one or more Associated Attachments.

If there is a conflict between the terms of this CoD Attachment and an Associated Attachment, the terms of the Associated Attachment prevail over those of this CoD Attachment. If there is a conflict among the terms of the Associated Attachments, the order of precedence will be as set forth in the applicable Associated Attachments.

2. Definitions

Activate – to cause an Upgrade to be available for general use on an Eligible Machine.

Associated Attachment – a separate Attachment which specifies additional terms governing IBM's provision and Customer's acquisition and use of one or more Capacity on Demand Offerings, and which references this CoD Attachment.

Built-in-Capacity – any Capacity or capability of an Eligible Machine that may be included with an Eligible Machine and which is to remain inactive, or for which use is restricted, until the right to access and use the resource or capability is properly acquired directly from IBM or through an authorized IBM reseller. Such computing Capacity and capabilities include, without limitation, processors, memory, storage, and/or workload-specific resources or capabilities (such as a specific operating system, programming language, or application to which use of the Machine is limited).

Capability Feature – a Feature which designates that a Machine is enabled for Customer's general use of a certain Capacity on Demand Offering.

Capacity -- resources (for example, general-purpose processors or memory) supporting the computing capability of an Eligible Machine.

Capacity on Demand Offering – an IBM System z offering for authorized use of Built-in-Capacity.

Deactivate – to cause an Upgrade to no longer be available for use on the Eligible Machine.

Eligible Machine – an IBM System z Machine for which Customer has acquired and installed one or more Capability Features.

Feature – Machine resources or function delivered by IBM through parts, LIC or entitlements to LIC, or any combination of the preceding.

Supplement – a Transaction Document between Customer and IBM which specifies certain terms or other information applicable to an Associated Attachment, and which references such Associated Attachment and this CoD Attachment.

Upgrade – a modification IBM makes to the Licensed Internal Code ("LIC") of an Eligible Machine such that Customer may use additional Capacity, either permanently or temporarily, as specified by IBM in the applicable Associated Attachment. The term "Upgrade" includes any type of Upgrade offered under an Associated Attachment.

3. Charges

When Customer orders Upgrades or Features from IBM, applicable charges will be specified in a Transaction Document (i.e. IBM proposal, IBM quote).

4. General Offering Terms

a. Customer represents and warrants that Customer is the owner of the Eligible Machine for which Customer orders an Upgrade or that Customer has the permission of the owner and any lien holders of the Eligible Machine to install an Upgrade.

b. An Upgrade consists solely of a modification to an Eligible Machine's LIC. Accordingly, no title to an Upgrade is transferred.

c. IBM will make available to Customer commercially reasonable instructions to properly Activate and Deactivate an Upgrade. Customer agrees to follow such instructions.

d. Program or service charges may increase for an Eligible Machine as the result of installation of an Upgrade.

e. If an Eligible Machine is upgraded (for example, conversion to a higher model or installation of additional features: 1) entitlements provided herein for the Eligible Machine will not change and 2) any Upgrade request will upgrade the Eligible Machine either (i) by the same amount of Capacity, but not necessarily the same amount of additional performance (based on performance characteristics of the Eligible Machine); or (ii) to the maximum amount of Capacity available on the Eligible Machine (based on the Eligible Machine's then-current model designation and installed Features), whichever is less. Upon Customer's request, IBM will provide Customer with estimated performance characteristics of an Eligible Machine.

f. Customer is responsible for maintaining each Eligible Machine in an operational condition sufficient for implementation and use of an Upgrade. If Customer does not maintain such an operational condition of an Eligible Machine, Customer may not be able to Activate or use an Upgrade until such condition is restored.

g. IBM may make commercially reasonable updates to the procedure by which an Upgrade is ordered, installed, Activated, or Deactivated. Customer agrees to install and

implement such update within a commercially reasonable period of time following IBM's notice to Customer of such update, provided IBM generally requires its customers to implement the same procedure update.

h. If Customer exports an Eligible Machine that Customer acquired in the United States outside of the United States, Customer will enter into a similar agreement with IBM in the importing country to govern IBM's provision and Customer's use of Capacity on Demand Offerings in that country.

i. Customer may not assign, or otherwise transfer, this CoD Attachment or any Associated Attachment, in whole or in part, or delegate Customer's obligations without the prior written consent of IBM. Any attempt to such assignment or transfer without such consent is void. IBM will not unreasonably withhold such consent.

5. Licensed Internal Code

Customer's use of LIC is subject to the terms and restrictions governing such use as specified in the Agreement. Customer's use of an Upgrade is governed by the terms and restrictions that govern LIC except as expressly provided in this Attachment or an Associated Attachment. LIC does not include any Program or code provided subject to a separate license agreement, including without limitation an open source license agreement.

5.1 Built-in-Capacity

An Eligible Machine may include Built-in-Capacity. If Customer is the rightful possessor of an Eligible Machine, IBM grants Customer a nonexclusive license to use the LIC on, or in conjunction with, only the Eligible Machine for which IBM provided the LIC, and only to the extent of IBM authorizations Customer has acquired for access to and use of Built-in-Capacity. If Customer's use of Built-in-Capacity exceeds such IBM authorizations, Customer agrees to pay IBM charges based on the full price of permanent, unrestricted use of the Built-in-Capacity at the then-current price. Customer is not authorized to use such Built-in-Capacity until such payment is made.

5.2 Circumvention of Technological Measures

Built-in-Capacity, Upgrades, and certain Features are limited by certain technological measures in LIC. Customer may not i) circumvent such technological measures or use a third party or third party product to do so or ii) otherwise access or use unauthorized Built-in-Capacity. If IBM determines that changes are necessary to the technological measures designed to limit access to, or use of, Built-in-Capacity, IBM may provide Customer with changes to such technological measures. Customer agrees, at IBM's option, to apply or allow IBM to apply such changes.

6. Term and Termination

6.1 Term

The term of this CoD Attachment begins once IBM receives a funded delivery order and ends upon termination as specified in Section 6.2 below.

6.2 Termination

This CoD Attachment terminates for a specific Eligible Machine when the Customer sells or otherwise transfers possession outside your Department or agency (including military

department) of the Eligible Machine, or any part of the Eligible Machine containing On-Demand Capacity.

Customer may terminate this CoD Attachment, or terminate Customer's rights under this CoD Attachment for any specific Eligible Machine, upon one month's prior written notice in accordance with the terms of the Agreement.

Either party may terminate this CoD Attachment if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

Upon termination of this CoD Attachment, all Associated Attachments, and all rights under the Associated Attachments terminate for Eligible Machines.

Any terms of this CoD Attachment and all Associated Attachments which by their nature extend beyond termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

This CoD Attachment, including its Associated Attachments and Supplements, and the Agreement comprise the complete agreement regarding IBM System z Capacity on Demand Offering transactions and replace any prior oral or written communications between Customer and IBM. In entering into this CoD Attachment, neither party is relying on any representation that is not specified in the CoD Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: i) performance or function of any Product or system, other than as documented in its Specifications; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

3.14.3.1 ATTACHMENT IBM SYSTEM Z CAPACITY BACK UP

The terms of this Attachment for IBM System z Capacity Back Up ("CBU Attachment") are in addition ii) Attachment for IBM System z Capacity on Demand Offerings identified above ("CoD Attachment"), and iii) the Attachment for IBM System z Replacement Capacity Offerings identified below ("RC Attachment") and govern IBM's provision and Customer's acquisition and use of the IBM System z Capacity Back Up ("CBU") offering. When used in this Attachment, "Customer" means the Originating US Government customer (defined as an Agency or an affiliated entity of the US Government) that is acquiring the IBM System z Capacity on Demand Offering, subject to the Agreement.

Associated Attachments

This CBU Attachment, the RC Attachment and the CoD Attachment provide terms that apply to the IBM System z Capacity Back Up offering. This CBU Attachment is i) an "Associated Attachment" to the CoD Attachment and ii) an "RC Associated Attachment" to the RC Attachment.

If there is a conflict among the terms of this CBU Attachment and the RC Attachment or the CoD Attachment, those of this CBU Attachment prevail over those of the RC Attachment and the CoD Attachment.

Definitions

Capitalized terms not defined in this CBU Attachment or in the Agreement have the meaning ascribed to them in the RC Attachment or the CoD Attachment, as applicable.

CBU Capability Feature – an RC Enablement Feature specifying that an RC Eligible Machine is authorized by IBM to be temporarily upgraded with a CBU Upgrade.

CBU Machine – an RC Eligible Machine for which Customer has acquired and installed one or more CBU Capability Features.

CBU Test – a procedure that Customer conducts to test the Emergency Activation process for a CBU Machine.

CBU Upgrade – a certain RC Upgrade whereby the CBU Machine performs temporarily as an Upgraded CBU Machine.

Emergency – an event that Customer declares due to Customer's unforeseen loss of substantial IBM System z or IBM System/390 Machine Capacity at one or more sites within Customer's Enterprise.

Emergency End – the earlier of i) reasonable restoration of Lost Capacity or ii) ninety (90) days following Activation of a CBU Upgrade for purpose of an Emergency.

Lost Capacity – for the purpose of this CBU Attachment, "Lost Capacity" means the Capacity which Customer is authorized to use and was the basis for Customer declaring an Emergency.

Production Workload – software products and programs which execute in support of Customer's business. Examples of Production Workload include without limitation, those characterized as "productive", "production", "development", "maintenance" and "test" workloads.

Upgraded CBU Machine – the Upgraded RC Eligible Machine for a CBU Machine.

Term and Termination

Term

The term of this CBU Attachment begins once IBM receives a funded delivery order and ends upon termination as specified in accordance with Section 3.2 below.

Termination

This CBU Attachment terminates for a specific Eligible Machine when the Customer sells or otherwise transfers possession outside your Department or agency of the Eligible Machine, or any part of the Eligible Machine containing On-Demand Capacity.

Customer may terminate this CBU Attachment, or terminate Customer's rights under this CBU Attachment for any specific CBU Machine, by providing written notice to IBM. Such termination is effective the later of i) the date of termination Customer specifies in such notice or ii) the date IBM completes the removal of all CBU Capability Features from Customer's CBU Machine(s).

Customer's rights under this CBU Attachment for a CBU Machine terminate upon the earliest of the following events: i) the CBU term acquired from IBM for the CBU Machine ends; ii) Customer transfers possession or control of the CBU Machine to another party (for example,

Customer returns the CBU Machine to a lessor, or transfers the CBU Machine outside of its Department or Agency – including military department); iii) the RC Attachment terminates; or iv) this CBU Attachment terminates.

Either party may terminate this CBU Attachment if the other fails to comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

Temporary LIC License

Customer's temporary license to use the LIC on a CBU Machine will commence on the date Customer Activates the CBU Upgrade and will terminate upon the later of the following: i) the Emergency End (applicable only to a CBU Upgrade which Customer Activates as result of an Emergency) or ii) expiration or termination of Customer's rights under this CBU Attachment for the CBU Machine.

CBU Upgrade Authorizations

IBM's authorization for Customer to Activate a CBU Upgrade and operate a CBU Machine as an Upgraded CBU Machine is valid only in the event of an Emergency or for the purpose of a CBU Test, as specified below in this section:

Emergency Authorization

In the event of an Emergency, such authorization will commence on the date Customer Activates the CBU Upgrade and will terminate upon the Emergency End.

During an Emergency, Customer is authorized to execute, on the Capacity of the CBU Upgrade, only workload from within Customer's Enterprise which previously was being executed on the Lost Capacity.

CBU Test Authorization

For the purpose of performing a CBU Test, such authorization will commence on the date Customer Activates the CBU Upgrade and will terminate upon the earlier of the following: i) the date Customer completes the CBU Test or ii) expiration of ten (10) days following Activation of the CBU Upgrade. Termination in either of the preceding events is the "CBU Test End".

The number of CBU Tests Customer is entitled to conduct on a CBU Machine is the amount acquired from IBM or an IBM Business Partner and installed on the CBU Machine.

During a CBU Test, on the Capacity of the CBU Upgrade, Customer may :

1. execute non-Production Workload (which may include one or more copies of Customer's Production Workload, provided the Production Workload is simultaneously executed on another Customer's Machine; or
2. execute Production Workload, provided an amount of System z Production Workload Capacity equivalent to the CBU Upgrade Capacity is shut down or otherwise made unusable by Customer for the duration of the CBU Test.

Customer's Responsibilities

Customer agrees as follows:

Customer will not perform a CBU Test for any reason, or in any manner, other than as authorized under the terms of this CBU Attachment;

Customer will not use a CBU Capability Feature or an Upgraded CBU Machine other than for the purpose authorized under the terms of this CBU Attachment;

Customer will execute workload on the Capacity of a CBU Upgrade only as authorized under the terms of this CBU Attachment;

Customer will Deactivate the CBU Upgrade from the CBU Machine no later than the Emergency End or CBU Test End, as specified in this CBU Attachment; and

Prior to expiration or termination of this CBU Attachment for a CBU Machine, Customer will:

Deactivate any CBU Upgrade from the CBU Machine and place an order with IBM or Customer's IBM Business Partner, as applicable, for removal of the CBU Capability Feature(s) from the CBU Machine. When ordered from IBM, such removal shall be provided for no charge; and grant IBM sufficient access to the CBU Machine for IBM to remove the CBU Capability Feature(s). Such access will be at a time mutually agreed upon by Customer and IBM but shall not be later than the date this CBU Attachment expires or terminates for the CBU Machine.

If Customer fails to place an order or grant IBM sufficient access to remove the CBU Capability Feature(s) or CBU Upgrade(s), as specified above, Customer will be obligated for all charges subsequently incurred for any CBU Upgrade Activated for the CBU Machine, even if the CBU Machine is not within Customer's possession or control.

General

Customer is not entitled to any prorated refund or credit from IBM for paid charges in the event of early termination of this CBU Attachment unless such early termination is due to IBM's non-compliance with the terms of this CBU Attachment, RC Attachment, CoD Attachment or the Agreement.

This CBU Attachment, the RC Attachment, the COD Attachment, and the Agreement comprise the complete agreement regarding the IBM System z Capacity Back Up offering, and replace any prior oral or written communications between Customer and IBM. In entering into this CBU Attachment, neither party is relying on any representation that is not specified in the CBU Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: i) performance or function of any Product or system, other than as documented in its Specifications; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

3.14.3.2 Attachment System z Replacement Capacity Offerings

The terms of this Attachment for IBM System z Replacement Capacity Offerings ("RC Attachment") are in addition to i) the Attachment for IBM System z Capacity on Demand Offerings in effect between Customer and IBM and identified above ("CoD Attachment") and govern IBM's provision and Customer's acquisition and use of an IBM System z Replacement Capacity Offering. When used in this Attachment, "Customer" means the Originating US

Government customer (defined as an Agency or an affiliated entity of the US Government) that is acquiring the IBM System z Capacity on Demand Offering, subject to the Agreement.

Associated Attachments

This RC Attachment and the CoD Attachment provide terms that apply in general to all IBM System z Replacement Capacity Offerings. This RC Attachment is an Associated Attachment to the CoD Attachment. Additional terms as set forth in RC Associated Attachments govern each specific Replacement Capacity Offering. The terms of this RC Attachment apply only when Customer has contracted for a Replacement Capacity Offering under one or more RC Associated Attachments.

If there is a conflict between the terms of the RC Attachment and the CoD Attachment, the terms of this RC attachment prevail. If there is a conflict between the terms of this RC Attachment and an RC Associated Attachment, the terms of the RC Associated Attachment prevail over those of this RC Attachment. If there is a conflict among the terms of the RC Associated Attachments, the order of precedence will be as set forth in the applicable RC Associated Attachments.

Definitions

Capitalized terms not defined in this RC Attachment or in the Agreement have the meaning ascribed to them in the CoD Attachment.

IBM Program License -- a license agreement containing terms and restrictions which govern the use of an IBM Program.

Lost Capacity – Capacity which Customer is authorized to use but is not able to use.

RC Eligible Machine – an Eligible Machine for which Customer has acquired and installed one or more RC Enablement Features.

RC Enablement Feature -- a Capability Feature specifying that an Eligible Machine is authorized by IBM to be temporarily upgraded with an RC Upgrade.

Replacement Capacity Associated Attachment (also called an "RC Associated Attachment") -- a separate Attachment between Customer and IBM which specifies terms in addition to those in this RC Attachment and the CoD Attachment governing IBM's provision and Customer's acquisition and use of a certain Replacement Capacity Offering, and which references this RC Attachment and the CoD Attachment.

Replacement Capacity Offering (also called an "RC Offering") – a Capacity on Demand Offering governed by this RC Attachment.

Replacement Capacity Upgrade (also called an "RC Upgrade") -- an IBM modification to the LIC of an RC Eligible Machine that enables the RC Eligible Machine to perform temporarily as an Upgraded RC Eligible Machine.

Upgraded RC Eligible Machine -- an RC Eligible Machine for which Built-in-Capacity has been Activated as authorized under terms of this RC Attachment and an RC Associated Attachment.

Temporary LIC License

IBM authorizes Customer to Activate an RC Upgrade and operate an RC Eligible Machine as an Upgraded RC Eligible Machine, for a limited period of time, as specified in an RC Associated

Attachment. For purpose of such Activation, IBM grants Customer a temporary license to use the LIC on the RC Eligible Machine to the extent Customer is authorized to Activate an RC Upgrade for such RC Eligible Machine, as specified herein and in the RC Associated Attachment.

IBM Program and Machine Maintenance Service Charges

Customer's authorization to Activate an RC Upgrade does not entitle Customer to any additional authorizations for use of IBM Programs. Upon reasonable notice, during normal business hours, and in a manner that minimizes disruption to Customer's business, Customer agrees to grant IBM sufficient access to RC Eligible Machines, including without limitation information regarding the use of IBM Programs on RC Eligible Machines, for the sole purpose of verifying Customer's compliance with IBM Program License terms.

An RC Upgrade that Customer Activates in accordance with the terms specified in either this RC Attachment or an RC Associated Attachment will not change IBM Program charges (provided Customer does not exceed its authorization for use of IBM Programs) or IBM maintenance Service charges. During the period that an RC Upgrade is Activated, Customer will continue to be responsible for all recurring charges for IBM Programs and IBM Machine maintenance Service at the rate applicable prior to the RC Upgrade being Activated and subject to the terms of each applicable IBM Program License and IBM maintenance Service agreement. Should Customer exceed its authorizations for use of IBM Programs, Customer will be responsible for all applicable license charges, in addition to IBM's other remedies that may be available under the terms of this Contract.

Term and Termination

Term

The term of this RC Attachment begins once IBM receives a funded order from the Government and ends upon termination as specified in Section 5.2 below.

Termination

This RC Attachment terminates for a specific RC Eligible Machine when the Customer sells or otherwise transfers possession outside your Department or agency (including military department) of the RC Eligible Machine, or any part of the RC Eligible Machine containing On-Demand Capacity.

Customer may terminate this RC Attachment, or terminate Customer's rights under this RC Attachment for any specific RC Eligible Machine, by providing written notice to IBM. Such termination is effective the later of a) the date of termination Customer specifies in such notice or b) the date IBM completes the removal of the RC Enablement Feature from each RC Eligible Machine(s) associated with such termination.

Customer's rights under this RC Attachment for an RC Eligible Machine terminate upon the earliest of the following events: i) IBM withdraws maintenance Service for the Machine type and model of the RC Eligible Machine; ii) the CoD Attachment terminates; or iii) this RC Attachment terminates.

Either party may terminate this RC Attachment if the other fails to comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

Upon termination of this RC Attachment, all RC Associated Attachments, and all rights for RC Eligible Machines under the RC Associated Attachments, terminate.

Customer's Responsibilities

Customer is responsible for acquiring, at Customer's expense, adequate memory, channels, and other system resources necessary to satisfy Customer's operational requirements for use of an Upgraded RC Eligible Machine.

This RC Attachment, including its RC Associated Attachments, the CoD Attachment, and the Agreement comprise the complete agreement regarding IBM Replacement Capacity Offerings, and replace any prior oral or written communications between Customer and IBM. In entering into this RC Attachment, neither party is relying on any representation that is not specified in the RC Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: i) performance or function of any Product or system, other than as documented in its Specifications; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

3.14.3.3 Attachment System z Capacity for Planned Events

The terms of this Attachment for IBM System z Capacity for Planned Events ("CPE Attachment") are in addition to i) Attachment for IBM System z Capacity on Demand Offerings identified above ("CoD Attachment"), and iii) the Attachment for IBM System z Replacement Capacity Offerings identified above ("RC Attachment") and govern IBM's provision and Customer's acquisition and use of the IBM System z Capacity for Planned Events ("CPE") offering. When used in this Attachment, "Customer" means the Originating US Government customer (defined as an Agency or an affiliated entity of the US Government) that is acquiring the IBM System z Capacity on Demand Offering, subject to the Agreement.

Associated Attachments

This CPE Attachment, the RC Attachment and the CoD Attachment provide terms that apply to the IBM System z Capacity for Planned Events offering. This CPE Attachment is i) an "Associated Attachment" to the CoD Attachment and ii) an "RC Associated Attachment" to the RC Attachment,

If there is a conflict among the terms of this CPE Attachment and the RC Attachment or the CoD Attachment, those of this CPE Attachment prevail over those of the RC Attachment and the CoD Attachment.

Definitions

Capitalized terms not defined in this CPE Attachment or in the Agreement have the meaning ascribed to them in the RC Attachment or the CoD Attachment, as applicable.

CPE Capability Feature – an RC Enablement Feature specifying that an RC Eligible Machine is authorized by IBM to be temporarily upgraded with a CPE Upgrade.

CPE Machine – an RC Eligible Machine for which Customer has acquired and installed one or more CPE Capability Features.

CPE Upgrade – a certain RC Upgrade whereby the CPE Machine performs temporarily as an Upgraded CPE Machine.

Event End – the earlier of i) reasonable restoration of Lost Capacity or ii) three (3) days following Activation of a CPE Upgrade for purpose of a Planned Event.

Lost Capacity – for the purpose of this CPE Attachment, "Lost Capacity" means the Capacity which Customer is authorized to use and was the basis for Customer declaring a Planned Event.

Planned Event – an event that Customer declares due to any loss of substantial IBM System z or IBM System/390 Machine Capacity at one or more sites within Customer's Enterprise.

Upgraded CPE Machine – the Upgraded Eligible Machine for a CPE Machine.

Term and Termination

Term

The term of this CPE Attachment begins once IBM receives a funded delivery order and ends upon termination as specified in accordance with Section 3.2 below.

Termination

This CPE Attachment terminates for a specific CPE Machine when the Customer sells or otherwise transfers possession outside your Department or agency (including military department) of the CPE Machine, or any part of the CPE Machine containing On-Demand Capacity.

Customer may terminate this CPE Attachment, or terminate Customer's rights under this CBU Attachment for any specific CBU Machine, by providing written notice to IBM. Such termination is effective the later of i) the date of termination Customer specifies in such notice or ii) the date IBM completes the removal of all CPE Capability Features from Customer's CPE Machine(s).

Customer's rights under this CPE Attachment for a CPE Machine terminate upon the earliest of the following events: i) Customer transfers possession or control of the CPE Machine to another party (for example, Customer returns the CPE Machine to a lessor, transfers the CPE Machine outside of the Department or agency – including military department); ii) the RC Attachment terminates; or iii) this CPE Attachment terminates.

Either party may terminate this CPE Attachment if the other fails to comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

Temporary LIC License

Customer's temporary license to use the LIC on a CPE Machine will commence on the date Customer Activates the CPE Upgrade and will terminate upon the later of the following: i) the Event End or ii) termination of the rights under this CPE Attachment for the CPE Machine.

CPE Upgrade Authorizations

IBM's authorization for Customer to Activate a CPE Upgrade and operate a CPE Machine as an Upgraded CPE Machine is valid only for a Planned Event. In the event of Planned Event, such authorization will commence on the date Customer activates the CPE Upgrade and will terminate

upon the Event End. During a Planned Event, Customer is authorized to execute, on the Capacity of the CPE Upgrade, only workload from within Customer's Enterprise which previously was being executed on the Lost Capacity.

Customer's Responsibilities

Customer agrees as follows:

Customer will not use a CPE Capability Feature or an Upgraded CPE Machine other than for the purpose authorized under the terms of this CPE Attachment;

Customer will execute workload on the Capacity of a CPE Upgrade only as authorized under the terms of this CPE Attachment;

Customer will Deactivate the CPE Upgrade from the CPE Machine no later than the Event End; and Prior to expiration or termination of this CPE Attachment for a CPE Machine, Customer will:

Deactivate any CPE Upgrade from the CPE Machine and place an order with IBM or Customer's IBM Business Partner, as applicable, for removal of the CPE Capability Feature(s) from the CPE Machine. When ordered from IBM, such removal shall be provided for no charge.; and

grant IBM sufficient access to the CPE Machine for IBM to remove the CPE Capability Feature(s). Such access will be at a time mutually agreed upon by Customer and IBM, but shall not be later than the date this Addendum expires or terminates for the CPE Machine.

If Customer fails to place an order or grant IBM sufficient access to remove the CPE Capability Feature(s) or CPE Upgrade(s), as specified above, Customer will be obligated for all charges subsequently incurred for any CPE Upgrade Activated for the CPE Machine, even if the CPE Machine is not within Customer's possession or control.

General

Customer is not entitled to any prorated refund or credit from IBM for paid charges if this CPE Attachment terminates early unless such early termination is due to IBM's non-compliance with the terms of this CPE Attachment, RC Attachment, CoD Attachment or the Agreement.

This CPE Attachment, the RC Attachment, the COD Attachment and the Agreement comprise the complete agreement regarding the IBM System z Capacity for Planned Events offering, and replace any prior oral or written communications between Customer and IBM. In entering into this CPE Attachment, neither party is relying on any representation that is not specified in the CPE Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: i) performance or function of any Product or system, other than as documented in its Specifications; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

CHAPTER 4 TABLE OF CONTENTS

CHAPTER 4. SPECIAL ITEM 132-12: MAINTENANCE AND REPAIR 1

TERMS AND CONDITIONS 1
4.1 SERVICE AREAS.....1
4.2 MAINTENANCE ORDER 1
4.3 REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS 3
4.4 LOSS OR DAMAGE 3
4.5. SCOPE 3
4.6 RESPONSIBILITIES OF THE ORDERING ACTIVITY.....5
4.7 RESPONSIBILITIES OF THE CONTRACTOR 5
4.8 MAINTENANCE RATE PROVISIONS.....5
4.9 REPAIR SERVICE RATE PROVISIONS 7
4.10 REPAIR PARTS/SPARE PARTS RATE PROVISIONS 7
4.11 GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS 7
4.12 INVOICES AND PAYMENTS 8
4.13 ADDITIONAL TERMS AND CONDITIONS: MAINTENANCE 8
4.13.1 Maintenance Service Coverage.....8
4.13.2 Services For Additional Charge And Excluded Under Maintenance.....11
4.13.3 Termination And Termination Charges.....12
4.13.4 Withdrawal Of Maintenance 13
4.13.5 Alterations/Attachments.....13
4.13.6 Acceptance 15
4.13.7 Maintenance Charges And Maintenance Credits 16
4.13.8 Invoicing And Payment.....16
4.14 HOURLY (PER CALL) SERVICE OF IBM MACHINES.....16
4.14.1 Orders For Per-Call Repair Service 20
4.14.2 Acceptance 20
4.14.3 Per-Call Repair Charges 20
4.15 REPAIR PARTS.....20
4.15.1 Acceptance 23
4.16 SERVICE OF NON-IBM MACHINES 23
4.17 ADDITIONAL TERMS 24
4.17.1 General 24
4.17.2 Storage Media 24
4.17.3 Service For Equipment After the Date of Withdrawal of Maintenance Service 25
4.17.4 Liability for Injury or Damage.....25
4.18 MAINTENANCE OFFERINGS 25
4.18.1 ServiceElite Offering 25

CHAPTER 4. SPECIAL ITEM 132-12: MAINTENANCE AND REPAIR

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) will provide for maintenance, repair parts and/or per-call repair service for the machines and equipment listed in this Price List for all Federal agencies (as defined in Paragraph (b) of 40 USC 472) Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia (all of which are hereinafter referred to as the Government). Maintenance service and repair parts will be provided to the Government for equipment installed within the United States, the District of Columbia, Puerto Rico. On a case-by-case basis, IBM will perform Maintenance Services to overseas U.S. Government locations which are in support of national or mutual defense operations (including U.S. Embassies), and to locations which support the national interest of the United States. Per-call repair service will be provided only for equipment installed within the United States, the District of Columbia and Puerto Rico.

4.1 SERVICE AREAS

a. The maintenance and repair service rates listed herein are applicable to any ordering activity location within a __(See IBM Clarification below)_ (**insert miles**) mile radius of the Contractor's service points. If any additional charge is to apply because of the greater distance from the Contractor's service locations, the mileage rate or other distance factor shall be stated in paragraphs 8.d and 9.d of this Special Item Number 132-12.

IBM's standard maintenance pricing applies regardless of the ordering activity's domestic location, except for service levels that require enhanced response time (i.e. 2-hour).

b. When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

IBM has a variety of facilities that support the maintenance and repair of equipment. Should the repair of equipment require the machine or part be returned to IBM, IBM will provide specific shipping information to the customer at the time the service call is placed to 1-800-IBM-SERV.

4.2 MAINTENANCE ORDER

a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the

order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.

Individual Government-owned Machines initially become subject to this Special Item on the date IBM receives the Government's order or on a later date if specified therein. The date of receipt by IBM of any written notices or orders shall be the date such notices or orders are received by IBM's Customer Fulfillment team.

Orders for maintenance coverage shall show the machine type, model, serial number, and specified location of the Machines. An order must include funding for the total machine, that is, the model and all of its installed IBM features and all of its internally connected non-IBM products for which maintenance service coverage is generally available.

b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lessor period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.

c. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

Upon receipt by IBM of one month's prior written notice, the Government may discontinue maintenance coverage. Such notice shall specify the type and serial numbers of the machines and the last date (day, month, year) of coverage. Notice, as stated above, should also be provided for a discontinuance when occurring at the end of the Contract period, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds.

Also, please refer to section called "Termination and Termination Charges" for additional terms.

d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

If not terminated, a renewal order shall be issued under the contract effective on the first day of the new fiscal year.

If a renewal delivery order is received by IBM with a coverage commencement date later than the first day of the fiscal year, the Government shall promptly modify such order to reflect October 1 of the then current fiscal year, or issue an order under Per-Call Repair Service and Repair Parts provisions of this contract for the period October 1, through the coverage commencement date set forth in the renewal order.

Should an agency notify IBM of their intent to renew, place maintenance/repair calls and then not provide a funded delivery order to IBM, the agency will be billed for the Service calls in accordance with the Per-Call Repair Services terms of this SIN.

If neither a renewal order nor a letter of intent to renew has been received by IBM, then the ordering activity will be billed for any Service calls place after the expiration of their funded maintenance order.

e. Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

The Government's purchase order shall specify the availability of funds and the period for which funds are available.

f. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

4.3 Repair Service And Repair Parts/Spare Parts Orders

a. Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the contract period.

b. When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering activity agrees, in advance, that additional repair personnel are required to effect repairs.

4.4 Loss or Damage

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

The Government is responsible for risk of loss of, or damage to, Machines during the period such Machines are in transit to IBM, except IBM is responsible for risk of loss of, or damage to (1) IBM-owned Machines and (2) Machines not owned by IBM while in IBM's possession or in transit, in those cases where IBM is responsible for the transportation charges. In addition, IBM will be responsible for any damage caused by IBM's negligence.

4.5. Scope

a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

b. Equipment placed under maintenance service shall be in good operating condition.

1. In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.
2. Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's uninterrupted guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
3. If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

IBM will provide maintenance coverage for Government-owned machines, and for IBM machines financed and leased under Special Item 132-3. The maintenance prices listed in this Price List include labor and maintenance parts, and provide for coverage during the indicated period (e.g., 24x7 Same Day Coverage or 9x5 Next Day Coverage).

If the Government leases Machines from parties other than IBM, installed within the 48 contiguous States and the District of Columbia, maintenance coverage for such Machines may be provided under this Special Item, subject to the understanding that the Government has authority from the owner to order such coverage, and provided that Maintenance coverage for such Machines is available.

Whenever the Government requires that maintenance service to be provided at a domestic location by persons with security clearances, the Government shall state that requirement in each order issued. IBM may, at its option, reject any such orders by written notice to the ordering office within 60 days of receipt. If a DD Form 254, DOD Contract Security Classification Specification is required for security purposes, Section 6.a of the DD Form 254 should show the same IBM address as on the delivery order for maintenance coverage.

Machine Qualification for Maintenance Service

With respect to Machines designated by IBM as "Customer Set Up" (CSU), the Government certifies that as of the date maintenance coverage commences such Machines are in good working order. With respect to non-CSU Machines, IBM reserves the right to inspect such Machines for maintenance coverage acceptability within one month from the date maintenance coverage commences. CSU Machines which are not in good working order at the time maintenance coverage commences, and non-CSU Machines which are deemed not acceptable for maintenance coverage as a result of inspection, are subject to disqualification by IBM.

Upon disqualification of a Machine from coverage, the Government may elect to have IBM bring the Machine to acceptable condition at IBM's rates and terms as set forth for Per-Call Service. Alternatively, the Government may elect to cancel its order for coverage and IBM will refund any monies paid by the Government for such Machine. However, in the event of such cancellation, IBM will charge for any Maintenance services (repair services) performed at the Government's request.

4.6 Responsibilities Of The Ordering Activity

a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.

b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

4.7 Responsibilities Of The Contractor

For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as skilled personnel are available during normal business hours, Monday through Friday, of the applicable IBM service location.

Refer to section entitled Hourly (Per Call Services), elsewhere in this chapter, for a complete set of terms associated with Hourly (Per Call)Service of equipment not covered by a maintenance contract of warranty.

4.8 Maintenance Rate Provisions

a. IBM's maintenance rates include labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

Refer to section entitled "Maintenance Service Coverage", elsewhere in this chapter, for a complete description of IBM's standard maintenance coverage.

b. REGULAR HOURS

The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

Standard maintenance service levels for eligible machines may be found in the maintenance price list.

For basic maintenance of IBM Machines, the Service description is set out in IBM's price quote.

Onsite Repair

24 x 7 same day Service is provided around the clock, every day, including IBM holidays. When onsite service is required, a service technician is scheduled to arrive at the Government's site within 24 hours of receiving the call, typically the same day. Some products are eligible for specific response time objectives of either two or four hours, after the remote problem determination is completed.

9 x 5 next business day A service technician is scheduled to arrive at the Government's site on the business day after IBM receives the Government's call. Business days are Monday through Friday, 8 am to 5 pm in the local time zone, excluding IBM holidays.

Depot Repair

When the Government calls IBM to request service and if the product cannot be repaired with the help of remote support, IBM will either (1) send the Government a return carton, with prepaid label to ship the failing part to the depot center for repair, or (2) send a courier to pick up the failing machine and deliver it to the depot center for repair. The target repair time, dependent on the machine type, ranges from as little as 12 hours to up to five business days after receipt at the depot.

Exchange Services

Dependent on machine type, either a courier or service technician will deliver a replacement product to the Government in exchange for the failed product. Service calls are accepted anytime, but the exchange service is available from 8 am to 5 pm, Monday through Friday, Eastern Time. All shipping and handling is paid by IBM.

Onsite Exchange IBM will ship a replacement the same day the service call was received and schedule next day delivery to the Government. If the service call is received after 8 p.m. Eastern time, the replacement will be shipped the following business day. An IBM service technician will go to the Government's site to remove the failed product and install the replacement product. In addition, the service technician will handle all return shipping responsibilities.

EasyServ Exchange IBM will ship a replacement the same day the service call was received and schedule next day delivery to the Government. If the service call is received after 8 p.m. Eastern time, the replacement will be shipped the following business day. Removal of the failed product and installation of the replacement is the Government's responsibility. The replacement packaging will include shipping instructions on how to return the failed product using the same carton that contained the replacement.

The Service response times described above are objectives, not guarantees. Not all levels of service are available for all products. See the Maintenance Price List for details.

c. AFTER HOURS

Should the ordering activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist. Periods of less than one hour will be prorated to the nearest tenth of an hour.

d. TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be:

IBM will invoice the Government for travel expense associated with maintenance service only when the Machine's location is inaccessible by both private automobile and scheduled public transportation.

IBM will invoice the Government, at the hourly rates in Appendix B for service time, including travel time and waiting time, for maintenance service provided outside the Period of Maintenance service.

4.9 Repair Service Rate Provisions

a. CHARGES. Charges for repair service will include the labor charge, computed at the rates set forth in Appendix B, for the time during which repairmen are actually engaged in work, and, when applicable, the charge for travel or transportation.

b. MULTIPLE MACHINES. When repairs are ordered by a ordering activity on two or more machines located in one or more buildings within walking distance of each other, the charges will be computed from the time the repairman commences work on the first machine, until the work is completed on the last machine. The time required to go from one machine to another, or from one building to another, will be considered actual work performance, and chargeable to the ordering activity, provided the time consumed in going between machines (or buildings) is reasonable.

c. TRAVEL OR TRANSPORTATION

(1) AT THE CONTRACTOR'S SHOP

a. When equipment is returned to the Contractor's shop for adjustments or repairs which are not covered by the guarantee/warranty provision, the cost of transportation, packing, etc., from the ordering activity location to the Contractor's plant, and return to the ordering activity location, shall be borne by the ordering activity.

b. The ordering activity should not return defective equipment to the Contractor for adjustments and repairs or replacement without his prior consultation and instruction.

(2) AT THE ORDERING ACTIVITY LOCATION

When equipment is repaired at the ordering activity location, and repair service rates are established for service areas or zones, the listed rates are applicable to any ordering activity location within such service areas or zones.

Refer to Appendix B for additional details.

d. LABOR RATES

Refer to Appendix B for applicable Per Call Rates

4.10 Repair Parts/Spare Parts Rate Provisions

Parts used to affect repairs by IBM may not be new but will be in good working order and at least functionally equivalent to the item replaced. Parts are guaranteed to be free from defects in material and workmanship for a period of three months from the date of installation on the Machine(s). The Government shall pay for all parts furnished at the prices in effect at the time of the order. All parts shall be furnished at a discount of 0% off IBM's commercial list prices.

4.11 Guarantee/Warranty—Repair Service And Repair Parts/Spare Parts

a. REPAIR PARTS/SPARE PARTS

All parts, furnished either as spares or repairs parts will be guaranteed/warranted for a period 3 months in accordance to the terms set forth below:

The machines or machine elements exchanged or parts provided under this Special Item may be used, but will be in good working order and at least functionally equivalent to the item replaced. Parts are warranted, for three months after delivery, to be free from defects in material and workmanship. IBM's obligation is limited to furnishing, on an exchange basis, replacements for parts which have been promptly reported by the Government as, in the Government's opinion, defective, and are so found to be by IBM upon inspection.

4.12 Invoices And Payments

a. Maintenance Service

1. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.
2. Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

b. Repair Service and Repair Parts/Spare Parts

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with paragraph 4.10, above. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

4.13 Additional Terms and Conditions: Maintenance

4.13.1 Maintenance Service Coverage

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Government of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine, and 2) provide the Service either at the Government's location or service center. IBM's Maintenance Services offering is available for 'total machines' only, that is a Machine and all of its installed IBM features and all of its internally connected non-IBM products for which maintenance service coverage is generally available.

When IBM provides on-site repair service for Systems Equipment installed within the 48 contiguous States and the District of Columbia, IBM will promptly dispatch a service technician (ST) to the Government's location to meet the stated service level response. The assigned

location of ST's will be determined by IBM considering the service requirements of all IBM customers. Service may, at the option of IBM, be provided by personnel of IBM's subsidiaries, affiliates, or subcontractors.

The Government agrees to provide a suitable environment for machines as specified by IBM. Subject to its security regulations, the Government will provide IBM full, free, and safe access to machines so that IBM may provide on-site service.

When the type of service requires that the Government deliver the failing Machine to IBM, the Government agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to the Government, at its expense using IBM standard shipping methods. If the Government specifies an alternative shipping method, additional charges may apply.

The Government agrees to:

1. In cases where the Government does not have title to the equipment, obtain authorization from the owner of the equipment to have IBM perform service, and

2. Where applicable, before IBM provides Service:

    a. Follow the problem determination, problem analysis, and service request procedures that IBM provides,

    b. Secure and restore all programs, data, and funds contained a Machine, and

    c. Inform IBM of changes in a Machine's location.

3. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and

4. when Customer returns a Machine to IBM for any reason --

    a. to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;

    b. to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and

    c. IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

When service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes the Government's. If the Government wishes to retain replaced parts for security purposes, the Government agrees to pay IBM's then-current purchase price for any retained parts. The Government represents that all removed items are genuine and

unaltered. The replacement may not be new, but it will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or Maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations and attachments which are not subject to this Special Item. IBM reserves the right to verify that a Machine is acceptable for exchange. Machines which are defaced, altered, or damaged beyond repair are not acceptable for exchange. The Government also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange. Except for Machines leased, the Government shall acquire title to the exchanged machine at the time of exchange.

Service for some IBM Machines involves IBM providing the Government with an exchange replacement for installation by the Government. Such exchange replacements may be i)a part of a Machine (called a Customer Replaceable Unit, or "CRU" e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. The Government may request IBM to install the replacement CRU or Machine, however, the Government may be charged for the installation. IBM provides information and replacement instructions with the Government's Machine at any time on the Government's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and the Government may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 days of Customer's receipt of the replacement. The Government is responsible for downloading designated Machine Code and Licensed Internal Code updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade. A feature alone or a Machine with less than all of its installed IBM features is not eligible for Maintenance Service Coverage. Feature/model increments removed from a Maintenance Service qualified machine DO NOT retain Maintenance Service Qualification (MSQ) status on a standalone basis. IBM does not offer Maintenance Service on a feature/model conversion increment that changes the capacity, speed, or function of a Machine beyond that which is provided by IBM.

Repair and exchange Service does not cover:

1. Accessories, supply items, consumables (such as batteries and printer cartridges),and structural parts, such as frames, and covers;

2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or third party;

3. Machines with removed or altered Machine or parts identification labels;

4. Failures caused by a product for which BM is not responsible; or

5. Service of machine alterations

6. Service of a Machine on which the Government is using capacity or capability, other than that authorized by IBM in writing.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventative maintenance.

IBM provides maintenance service for selected non-IBM machines.

Government's Responsibilities:

When you contract for an applicable Service, you agree:

1. to provide IBM with an inventory in which you identify all Eligible Products to be covered at each Specified Location and to notify IBM whenever you wish to move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. to return to IBM all defective CRUs (from covered Eligible Machines) within 15 days of your receipt of the replacement CRU. A "CRU" is a Machine part which is designated as a Customer Replaceable Unit (e.g. keyboards, memory, or hard disk drives). IBM provides CRUs to you for replacement by you;
3. that when the Service includes IBM providing you with access to electronic diagnostic tools, information databases, or other Service delivery facilities, you will limit the use of these to only those who are authorized to use them under your control and only in support of Eligible Products and Services identified in Schedules;
4. to provide IBM with information it requests which is related to its provision of the Services to you and to notify IBM of any changes;
5. that you authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with you;
6. to pay any communications charges associated with accessing these Services unless IBM specifies otherwise in writing; and
7. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise.
8. to securely erase from any Machine that you return to IBM for any reason all programs not provided by IBM with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data") and 2) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g., by making it anonymous or encrypting it) so that it no longer qualifies as Personal Data under applicable law. You also agree to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that you return to IBM. You acknowledge that, to perform its responsibilities under this Agreement, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world, and you authorize IBM to do so.

4.13.2 Services For Additional Charge And Excluded Under Maintenance

The following items are not covered under IBM's maintenance services, but may be provided under Per-Call Repair Service, or as otherwise identified in Chapter 7, Special Item 132-51 (e.g., machine movement charges).

1. Repair of machine damage, replacement parts, or increase in service time caused by
    a. Failure to continually maintain a suitable environment as prescribed by IBM;
    b. Accident, disaster, transportation, vandalism, misuse, or abuse;
    c. Another product or device not under IBM warranty or a contract which includes IBM maintenance service;
    d. Service of the Machine by other than IBM;
    e. A non-IBM modification, when repairs are made within the first three-month period following such modifications to a Machine under maintenance coverage;

2. Repair of Machine damage, replacement of maintenance parts (due to other than normal wear), or repetitive service calls caused by the use of, inadequate use of, or failure to use specified supplies;

3. Inspection of an altered Machine;

4. Changes and repairs necessary to bring a Machine to acceptable condition for maintenance coverage under this Special Item;

5. Replacement or relocation of Machines and provision of necessary materials, including but not limited to rearrangement, relocation and discontinuance services in association with new equipment activity;

6. Replacement of a part not provided by IBM for a Machine; IBM will only replace such part with directly interchangeable IBM maintenance parts;

7. Reinstallation of systems displaced as a result of new equipment installations.

The services provided under this Special Item do not include:

a. Furnishing supplies;
b. Painting or refinishing Machines or furnishing material therefore;
c. Replacement of parts which are not maintenance parts;
d. Installation, maintenance, or removal of alterations or attachments to Machines or any service which is impractical for IBM to render because of such alterations or attachments.

4.13.3 Termination And Termination Charges

IBM or the Government may terminate a Maintenance Service if the other does not meet its obligations concerning the Service.

The Government may terminate a Maintenance Service, on one month's written notice, without adjustment charge, provided any of the following circumstances occur:

1. The Government permanently removes the eligible product, for which the Service is provided, from productive use;

2. The eligible location, for which the Service is provided, is no longer controlled by the Government (for example, because of sale or closing of the facility);

3. The Machine has been under Maintenance Services for at least six months and the Government gives IBM one month's written notice prior to terminating the maintenance Service.

For all other circumstances, the Government may terminate a Maintenance Service on one month's written notice to IBM, but such termination will result in adjustment charges equal to the charges remaining to complete the fiscal year in which termination occurred.

Notwithstanding anything to the contrary in this Agreement, the Government's obligation for performance is contingent on the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment of recurring maintenance service may arise beyond the end of the fiscal year until funds are made available to the Contracting Officer for performance and until IBM receives notice of availability to be confirmed in writing by the Contracting Officer.

The Government agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through the service termination, and ii) reimbursable expenses IBM incurs through Service termination.

4.13.4 Withdrawal Of Maintenance

IBM will offer maintenance services for Machines as long as such services are generally available. IBM will modify this contract as notification of machine availability status changes as announcements are made to IBM's customers generally. See Appendix F for a list of Machines with their corresponding announced maintenance withdrawal dates.

For Machines that have a planned withdrawal date during the period of this contract, IBM will accept orders for maintenance only through the planned withdrawal date. Orders for per-call repair service and parts after the planned withdrawal date are subject to availability.

4.13.5 Alterations/Attachments

General

An alteration is any change made to an IBM machine that deviates from IBM's physical, mechanical, electrical, or electronic design (including microcode), whether or not additional devices or parts are used. An alteration is also any interconnection to an IBM machine at other than an IBM defined interface of (1) an IBM machine, (2) non-IBM machine, or (3) any other product.

An attachment is non-IBM equipment connected, directly or indirectly, to an IBM machine at an IBM defined interface. The connection may be mechanical, electrical, or electronic.

If an IBM machine under an IBM Customer Agreement is altered, IBM requires that the unaltered portion of such machine be promptly inspected. The inspection helps to determine if IBM can still provide Warranty Service or Maintenance for the unaltered portion of the machine and if there are any apparent safety hazards. After inspection, IBM will continue to make

Warranty Service or Maintenance available, as appropriate, for the unaltered portion of an IBM machine. This service will be available as long as it is safe and practical, using standard IBM tools, diagnostics, maintenance documentation, and procedures.

For purchased machines where IBM has Warranty Service or Maintenance responsibility, the customer should promptly notify IBM upon the completion of any installation, reinstallation, modification, or removal of an alteration to or from an IBM machine.

For purchased machines under warranty or Maintenance Service, MSQ and warranty are suspended at the time other-than-IBM technical work commences. MSQ is reinstated via a Maintenance Service Acceptability Inspection.

For machines owned by IBM, the customer should notify IBM, in writing, before an alteration is made. The customer should promptly notify IBM following the removal of the alteration.

Each notification will allow IBM to schedule an inspection to determine that our ability to provide Warranty Service or Maintenance for the unaltered portion of the machine is unimpaired and that there are no apparent safety hazards.

If IBM is not notified of an alteration and it is discovered during a service action, an inspection should be initiated after advising the customer of its purpose and intent.

Inspection Of Alterations

IBM requires an inspection of the unaltered portion of an IBM machine to determine the continued availability of IBM Warranty Service or Maintenance. The inspection by local service personnel is billable at IBM's Hourly Service rates.

IBM will advise the customer, in writing upon request, of any limitation, resulting from the alteration, affecting IBM's ability to provide Warranty Service or Maintenance after review by the appropriate Service Delivery Manager.

IBM will not design special tests for the unaltered portion of an IBM machine or for an alteration. Nor will IBM make engineering analyses in an attempt to determine possible effects of an alteration. During an inspection, IBM will use standard tests and procedures. IBM developed these tests and procedures for use during installation, Warranty Service, or Maintenance of IBM machines, features, or model conversions.

The IBM inspection will check for apparent safety hazards, disabled diagnostics, access restrictions, parts, and wiring not readily distinguished from IBM parts and wiring, and correct operation of the unaltered portion of the IBM machine. IBM may check for other items during an inspection.

The inspection does not take into account the complexity of an alteration, and may not detect all problems that may result from the alteration.

Customers are responsible for the operation of alterations and for providing IBM service representatives free and clear access to the unaltered portion of the IBM machines.

Maintenance Plan For Altered Machines

When an alteration in or attachment to an IBM machine or system:

Interferes with the normal and satisfactory operation or maintenance of a machine in a manner that renders its maintenance and repair impractical for IBM's personnel having had the standard training and instruction, or

Creates a safety hazard,

The customer must, as a requisite for continuing IBM Warranty Service or Maintenance:

- Modify the alteration or attachment to achieve a practical maintenance condition, or,

Remove the alteration or attachment and return the machine to a practical maintenance condition.

When maintenance of the unaltered portion of a machine or system has been determined upon inspection by IBM to be practical, and no safety hazard has been identified, IBM and customer responsibilities will be as follows:

In servicing and maintaining the unaltered portion of a machine, IBM personnel will use the diagnostics, maintenance procedures, and other maintenance documentation normally supplied by IBM for the machine.

If, during a service call, IBM's diagnostic efforts indicate that the failure is located in the unaltered portion of the machine, we will proceed to perform maintenance and repair.

If, in attempting to service and maintain the unaltered portion of a machine, IBM is precluded from completing normal diagnostic efforts and maintenance procedures as a result of interference by an alteration or attachment, or if IBM determines that the failure may be located in the alteration or attachment, IBM will notify the customer that he or she has two options:

Request the service organization responsible for maintaining the alteration or attachment to proceed with diagnosis, maintenance, and repair of the alteration or attachment, or

Have the alteration or attachment disconnected or removed before IBM will proceed further. If the cause of the failure cannot be determined, IBM may require that the alteration or attachment be completely disconnected and removed. This may be required for IBM to complete maintenance and repair of the unaltered portion of the machine.

When an alteration or attachment interferes with installation of engineering changes, model changes, programs or features provided by IBM, or with their maintenance or removal, IBM may require that the alteration or attachment be removed as a condition of our completing installation, maintenance, or removal.

Should an alteration or attachment affect maintenance of an IBM machine, IBM will complete maintenance and repair of the unaltered portion in as timely and effective a manner as possible.

4.13.6 Acceptance

On the last day of the maintenance period for which charges are stated; that is, month or year.

4.13.7 Maintenance Charges And Maintenance Credits

Standard Maintenance Charges:

The Government agrees to pay maintenance charges for each Machine consisting of (1) a Maintenance Charge or Warranty Option Charge and (2) an Additional Maintenance Charge for a Usage Plan machine. Such charges are set forth elsewhere in this Price List.
Adjustment to Maintenance Charges:

A change in a Machine's type of service will result in an adjustment to maintenance charges. IBM will provide an upgrade to an on-site type of service on a per-incident basis for selected machines. A change in a Machine's specifications may result in an adjustment to maintenance charges.

Machines maintained offsite, on an exchange basis, Machines maintained under a depot maintenance agreement, and Machines installed on board Government ships are not eligible for maintenance credits.

Usage Charges:

The Government agrees to promptly submit to IBM the meter reading for each Usage Plan machine. Such reading will be as of the close of the last workday of the invoice period for which the Maintenance Charge apply or upon Machine withdrawal.

Travel charges:

IBM will invoice the Government for travel expense associated with maintenance service only when the Machine's location is inaccessible by both private automobile and scheduled public transportation.

IBM will invoice the Government, at the hourly rates in Appendix B for service time, including travel time and waiting time, for maintenance service provided outside the Period of Maintenance service.

4.13.8 Invoicing And Payment

All charges for Maintenance, Per-Call Repair Service, and Repair Parts are due and payable upon receipt of IBM's invoice.

In the event that the Government is of the opinion that any charges or credits on an invoice are not billed properly, every effort should be made to promptly pay the portion of the invoice not in question and give detailed written notice to IBM concerning the items in question.

4.14 Hourly (Per Call) Service of IBM Machines

IBM provides hourly service in accordance with the following conditions and provisions which are subject to change without notice. Service may be obtained by contacting IBM at 1-800-IBM-SERV (426-7378). **PARTS SOLD BY IBM MAY BE NEW OR SERVICEABLE USED PARTS.**

Definitions

The term "machine(s)" as used herein refers to machines and/or machine elements unless the context requires individual reference.

Machine-related services include, but are not limited to, installation planning, remedial and preventive maintenance, relocation and inspections.

IBM Hourly Service, as used in this bulletin, means machine or machine-related hardware services available from IBM, when such service is not covered under an IBM agreement.

Authorization for IBM to Perform and Charge for IBM Hourly Service

IBM's authorization to provide and charge for IBM Hourly Service is established by a customer request for service. The customer represents that they are the owner of the machine(s) or are properly authorized by the owner to request service. It is the customer's responsibility to ensure that their personnel or others requesting IBM Hourly Service on their behalf have proper authorization to do so. A customer requesting service is responsible for all charges associated with such service. Customer will be required to provide IBM a valid form of payment prior to service being performed. Valid forms of payment are credit card (preferred by IBM), funded purchase order, or other financial instrument mutually agreed to by IBM and the customer.

In those instances or locations where special customer authorization or reporting procedures are desired, IBM must agree to such procedures. It is the customer's responsibility to ensure that the IBM service representative is notified of such special procedures each time service is requested.

IBM Hourly Service

IBM Hourly Service may include repair or exchange service. A failing machine is a machine presented to IBM for IBM Hourly Service (failing machine). An exchange machine is a machine provided by IBM in exchange for a failing machine (exchange machine).

Repair service includes remedial maintenance and may include lubrication, adjustments, and replacement of maintenance parts, all as deemed necessary by IBM. Maintenance parts furnished by IBM may be used parts. When a failing machine is to be repaired or when other IBM Hourly Services are to be provided, at either the customer's or an IBM location, the customer is responsible to remove or implement other safeguards to protect all programming, programs, data and removable storage media prior to presentation to IBM.

When the customer presents a failing machine to IBM for exchange, and it is accepted by IBM, it becomes the property of IBM at the time of exchange. An exchange machine may not be new,but will be in good working order and at least functionally equivalent to the item replaced, and become the customer's property at the time of exchange. When a failing machine is to be exchanged, the customer is responsible to remove all programming, programs, data and removable storage media, and all non-IBM parts, options, alterations and attachments before such exchange. The customer agrees that all items not removed will be deemed to have been discarded. The customer is responsible for all risk of loss of, or damage to, machines owned by other than IBM during the period such machines are in transit to and from IBM, except for loss or damage caused by IBM's negligence. However, IBM is responsible for risk of loss of, or damage to, machines owned by other than IBM while in possession of IBM or in transit from IBM by an IBM selected carrier whose expenses were prepaid by IBM. IBM will not accept in exchange defaced machines, or those that show obvious signs of alteration or physical damage beyond repair. If upon subsequent inspection IBM determines that it has accepted in exchange a

failing machine in a damaged or altered condition, the customer is responsible for IBM Hourly Service charges associated with repair of damage or restoration of such machine.

Hours of Availability

The availability of IBM Hourly Service is limited to normal business hours, Monday through Friday, of the applicable IBM service location.

IBM Hourly Service will be made available outside normal business hours if the machine failure, for which service is required, is related to, (1) federal, state or local government emergency, (2) life or health-threatening situations, or (3) a machine failure attributed to, or requiring access to, proprietary IBM engineering information.

Machines with Non-IBM Alterations or Attachments

In the case of an altered machine, service will be confined to the unaltered portions of the IBM machine. Any single repair must be the responsibility of either IBM or another party.

IBM service representatives will work jointly with a non-IBM service representative to determine where a problem resides when correct operation of both the IBM and interconnected non-IBM equipment is in doubt.

Machines Containing Funds

The customer is responsible for removing, controlling and replacing or reloading funds contained in the machines. IBM will service machines containing funds only when the cash container cannot be opened prior to repair by IBM. The customer will remove the funds as soon as the container has been opened.

Machine Types Withdrawn by IBM from Maintenance Services under an IBM agreement

After the effective date of discontinuance of IBM lease and rental machines and withdrawal of Maintenance Services for machines under an IBM agreement, IBM Hourly Service will be dependent upon the availability of skills and other resources such as parts, tools, and test equipment.

IBM will attempt to complete maintenance or other services. If IBM determines that it is unable to fully restore the machine to good working order or complete any other services requested, IBM will notify the customer. Further, any assistance provided by additional IBM service representatives will also be charged for at the applicable IBM Hourly Service rates.

Safety

If a safety hazard is identified, IBM will notify the customer and further service will be suspended until the condition is corrected.

Parts

Parts sold by IBM may be new or serviceable used parts.

IBM does not accept removed parts for credit.

When a maintenance part not furnished by IBM requires replacement, IBM will, at the customer's request, replace such part (except when such part is an alteration) with a directly interchangeable IBM maintenance part.

Charges

All time and expense associated with the IBM per-call service request will be charged in accordance with the applicable rates shown in Appendix B.

The Customer agrees to pay for all IBM Hourly Service, including service associated with troubles of an intermittent or repetitive nature, upon receipt of IBM's invoice. IBM Hourly Service will be provided at IBM's 1) then generally available hourly service rates and minimum charges for service time, including travel and waiting time, 2) parts, exchange and material prices then generally in effect, and 3) charges for travel and shipping expense, all as applicable. In addition, the customer will be invoiced for applicable taxes. Actual repair charges will be applied to the customer provided form of payment (credit card or purchase order) upon completion of the service request.

Charges for service will depend on the type of equipment and the time of day at the location where the work is performed. A minimum charge will apply to each service visit when a service incident, although incomplete, is terminated during one visit and resumed during subsequent visits. However, when a service action is interrupted, either for IBM convenience or to obtain a part for installation at a later time, additional charges to meet the minimum charge amount will be applied only once.

If a customer at any time elects to terminate an hourly service call, the IBM service representative will discontinue the service call and the customer will be charged for all time, expense and parts associated with the service that has been provided. If an IBM service representative incurs any travel time and expense in response to a service request that is later cancelled, the call will be considered to have been taken and the customer will be charged accordingly.

If an IBM service representative receives assistance because of an inability to diagnose a trouble and the trouble is of a nature that can normally be handled by one individual, the customer will only be charged for the time and expense of one service representative during any concurrent period of time (except as previously described under "Machine Types Withdrawn by IBM from Maintenance Services under an IBM agreement"). However, whenever a service activity requires the efforts of more than one service representative, as determined by IBM, this requirement will be brought to the attention of the customer for concurrence prior to additional assistance being applied. In this event, the customer will also be charged for services of the additional individual(s) furnishing such assistance.

Limited Warranty and Disclaimer of Warranty

The machines or machine elements exchanged or parts provided may be used and are warranted for three months after delivery from IBM to be free from defects in material and workmanship. IBM's obligation is limited to furnishing, on an exchange basis, replacements for machines, machine elements and parts which have been promptly reported by the customer as having been, in the customer's opinion, defective and are so found by IBM upon inspection. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF**

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS, AND THE CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

4.14.1 Orders For Per-Call Repair Service

The Government shall issue a written order or credit card order to cover each call for repair service. Agencies are encouraged, whenever practicable, to use blanket delivery orders or credit cards in lieu of individual orders. In such instances, IBM will accept verbal orders from agency personnel as sufficient authority to provide billable service.

For IBM Hourly Service billing purposes only, IBM's normal business hours are 8:00 a.m. to 5:00 p.m., even if the local IBM working hours are different. These hours apply only to workdays. Workdays are considered to be Monday through Friday, except national or statutory holidays.

Each order issued for Repair Service shall specify the particular service requested, however IBM will not accept orders for service on Machine types which are not field repairable.

IBM shall not be obligated to furnish repair service or parts when causes beyond IBM's control (as set forth in FAR 52.249-8, Default, Apr. 1984) prevent IBM from furnishing such repair service.

4.14.2 Acceptance

On the date repair service is completed.

4.14.3 Per-Call Repair Charges

All time and expense associated with the IBM per-call service request will be charged in accordance with the applicable rates shown in Appendix B.

4.15 REPAIR PARTS

DEFINITION

A maintenance part is any repair or replacement part authorized for use by IBM service representatives in the field for maintenance of IBM machines. Most maintenance parts are field replaceable units (FRUs) which are not divided into subassemblies.

GENERAL

IBM sells parts only for the maintenance and support of IBM machines. You agree to purchase parts with the intent to use maintenance parts for these purposes and not for other uses such as

manufacturing. IBM limits the sale of parts due to specific concerns, such as patent restrictions, and the need to ensure continuing parts availability as follows:

Available for Sale:

IBM will sell parts, in reasonable quantities, for use by others in support of IBM machines. This includes:

parts and assemblies which are considered FRUs and appearance items such as covers used for reconditioning, rebuilding or repairing damage of IBM machines;

additional parts used for the performance of installation, removal and reinstallation of IBM features and model conversions on IBM machines;

parts used for restoration of altered IBM machines; and

parts defined by IBM to interface other manufacturers' equipment to an IBM defined multiple machine interface on an IBM machine.

Certain parts are sold only on an exchange basis. IBM will also sell certain maintenance tools, test equipment and supplies required for field maintenance of IBM machines.

Modification and improvements in design may occur at any time and could affect future availability of any part.

IBM will make parts available for sale as long as IBM uses such parts in maintaining IBM machines. IBM will fill quantity orders for maintenance parts when there is sufficient supply to permit. However, it may be necessary to restrict quantities to those required for immediate maintenance needs to help ensure continuing parts availability to all. After the discontinuance of IBM lease and rental and withdrawal of Maintenance Service for a machine, IBM will continue to accept orders for parts, in reasonable quantities, in the normal manner until existing stocks are depleted.

Not Available for Sale:

Items generally not available for sale include those parts, assemblies, subassemblies, components or raw materials used by IBM only in its manufacturing operations. Except as may be specified in individual OEM agreements, IBM does not sell IBM brand parts for use in support (including manufacturing and maintenance) of non-IBM brand machines, features, devices or alterations.

IBM may refuse to accept or may cancel orders for parts intended for other uses such as manufacturing.

ORDER ACCEPTANCE AND PROCESSING

Customer orders will be accepted by the IBM Parts Sales Center. All communications regarding such orders, including authorization and direction for parts being returned, must also be directed to the IBM Parts Sales Center.

In an emergency, IBM will deliver an order for standard maintenance parts, required for an immediate repair, at an IBM Designated Parts Sales Location (DPSL) in the U.S. or at the country’s parts sales location. An individual parts sales location may not have any hours of operation after normal business hours. When a part is not available at the DPSL or in the country

where the customer requested delivery, IBM will make an effort to secure the part in an expedited manner at an additional charge; alternatively IBM will deliver the parts via standard channels.

A handling charge will apply to any order placed on an emergency basis. An additional charge will be applied to any order placed between the hours of 10 p.m.–8 a.m. in your local time zone, Monday–Friday, and anytime Saturday, Sunday and holidays.

Orders are to be placed directly with IBM Maintenance Parts Sales in Mechanicsburg, PA . Orders will be accepted by telephone at (800) 388-7080, by facsimile at (800) 610-7563, or via internet at http://www.ibm.com/shop/us/maintenanceparts available 24 hours per day, seven days per week.

An additional fee of $399.00 will be added for all orders placed between the hours of 10 p.m. to 8 a.m. EST, Monday through Friday, and anytime Saturday, Sunday and holidays

A $7.50 per order handling charge with a maximum of eight (8) part numbers per order for expedited orders

A $75.00 per order handling charge with a maximum of eight (8) part numbers per order for emergency orders

Shipping charges will be applied to all expedited and emergency orders

A service charge of $275.00 is applied to any order placed outside regularly scheduled hours if it requires an employee to travel to process the order. This applies to emergency DPSL orders only.

IBM maintains parts locations primarily to provide maintenance parts for IBM service representatives, and stock levels are based on their requirements. In instances of unusual delays, IBM will notify the customer.

ORDERS REQUIRING MARKETING ASSISTANCE

Certain orders must be submitted in writing to your local IBM sales office. Examples include:

orders for parts for use by customers or other manufacturers to interface non-IBM brand machines to IBM defined multiple machine interfaces;

certain parts determined by IBM to be in limited availability and orders for IBM features and model conversions.

RETURNS

All parts sales are final, subject to existing warranty provisions. IBM will accept returns in accordance with such warranty provisions. In addition, IBM will accept the return of unused parts, within one month of date of purchase, when the:

incorrect part/quantity was ordered as the result of decimal error, transposed digits, part name/number mismatch, adjacent parts catalog line items, EC level or machine configuration or an error caused by IBM,

part/quantity furnished did not correspond to the customer order, or

substitute part furnished does not meet customer needs

IBM will assess a 10% restocking fee on parts shipments refused and/or not picked up by the customer. The 10% fee will be based on the price of the part plus shipping and handling fees.

Acceptance of a returned part will be contingent upon presentation of the invoice or purchase order that substantiates the original transaction. The purchase of the correct part is also required concurrently when IBM provided the incorrect part in error.

PRICES

Prices are subject to change without notice. Parts will be invoiced at the lower of either the selling price quoted, if the order is placed within one month of a written quotation, or the price in effect at the time IBM accepts the order.

LIMITED WARRANTY

Parts sold by IBM may be new or certified used parts, which carry the same warranty as a new part. Parts are warranted, for three months after delivery, to be free from defects in material and workmanship. IBM's obligation is limited to furnishing, on an exchange basis, replacements for parts that have been promptly reported by the customer as, in the customer's opinion, defective and are so found by IBM upon inspection. The replacement part assumes the warranty service status of the replaced item. **THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.**

4.15.1 Acceptance

On the date the repair parts are received by the Government.

4.16 Service Of Non-IBM Machines

IBM provides maintenance service for the Non-IBM Machines identified in the maintenance price list for Non-IBM Machines. The service is designed to keep your Non-IBM Machines in, or restore them to, conformance with their specifications. Unless specified otherwise, Service is provided only for the manufacturer’s base configuration for each covered Machine model. You are responsible for following the manufacturer’s and IBM’s provided guidelines pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request.

Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to

those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that IBM use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge for these parts.*

The service of Non-IBM Machines does not include activities related to the following:

A. Machine installation, engineering change activity, or preventive maintenance;

B. Correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;

C. service of microcode or firmware,;

D. Service of features, parts or devices not supplied by either: 1) the Machine's original manufacturer, or 2) IBM during the performance of this Service;

E. Service for accessories, supply items, and certain parts, such as batteries, frames, and covers;

F. Service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;

G. Service of a Machine with removed or altered Machine or parts identification labels;

H. Failures caused by a product for which we are not responsible; or

I. Service of Machine alternations

Service Termination In the event that IBM cannot provide satisfactory service on any Non-IBM Machine due to reasons such as, but not limited to, IBM's inability to obtain a suitable supply of generic parts, IBM may terminate service for a Non-IBM Machine by providing advance notice to the Government. The Government may terminate service of Non-IBM Machines consistent with the terms in the section entitled Termination and Termination Charges.

Eligible Non-IBM Machines must meet IBM’s safety and serviceability requirements. IBM reserves the right to inspect a machine within one month from the start of service. If the Machine is not in an acceptable condition for service, we will notify you and terminate coverage.

4.17 Additional Terms

4.17.1 General

IBM shall not be obligated to furnish service or assistance in instances when causes beyond IBM's control as set forth in FAR 52.249-8, Default, April 1984, prevent IBM from furnishing service.

4.17.2 Storage Media

If for any reason the Government wishes to retain any storage media which is a part of a Machine or test equipment, (e.g., Magnetic Disks, Memory Cards, etc.), the Government shall pay IBM for all parts and labor required for IBM to remove such media and return the machine

to good operating condition. Such labor and parts shall be provided as Per-Call Service and Repair Parts.

4.17.3 Service For Equipment After the Date of Withdrawal of Maintenance Service

After the discontinuance of lease, and withdrawal of Maintenance Services under an IBM agreement, IBM Hourly Service will be available for purchased machines. This depends on the availability of skills and other resources such as parts, tools, and test equipment. All the time, expense and parts associated with the IBM service provided will be charged according to the applicable IBM Hourly Service rates, terms, and conditions.

In response to each request for service, IBM will determine if an IBM service representative qualified to provide such service is available at the nearest point of service. If IBM determines that a qualified service representative is not available, IBM will, at the customer's request, dispatch a qualified service representative from another point of service, if available. The customer will be charged for all time (including travel and assist time), expense, and parts associated with all IBM services provided according to IBM's Hourly Service rates, terms, and conditions.

IBM will attempt to complete such maintenance or other services in as timely and effective a manner as possible. However, if IBM determines that it is unable to fully restore the machine to good working order or complete any such other service, IBM will notify the customer. All time, expense and parts associated with the IBM service provided will be charged to the customer. All other provisions of the Information Bulletin for Customers—IBM Hourly Service remain in effect.

4.17.4 Liability for Injury or Damage

IBM shall not be liable for any injury to Government personnel or damage to Government property arising from the use of Equipment maintained or repaired by IBM, unless such injury or damage is due to the fault or negligence of IBM, in which case liability will be in accordance with the limits stated at 1.41 Limitation of Liability.

4.18 Maintenance Offerings

4.18.1 ServiceElite Offering

ServiceElite is an option available to Government customers that provides incentives to the standard maintenance price or the price of selected services available in SIN 132-51 of this Schedule. These incentives are available depending on specific qualifications as identified in the Term, Scope and Paperwork Reduction incentives below. These incentives are applied to all eligible components of the Government's delivery order.

Term Incentive

A term incentive is available on Government orders or Blanket Purchase Agreements (BPA's) that provide a multi-year commitment of IBM maintenance, notwithstanding the requirement for termination for fiscal year non-appropriation of funds or per the terms and conditions of termination identified below. The term for which the Government is committing to must be identified on the delivery order or on the BPA in order to take advantage of this incentive.

Term	Incentive	Term	Incentive
2 years	1%	4 years	5%
3 years	3%	5 years	8%

Scope Incentive

A Scope incentive is available if the procuring Government agency orders both maintenance and any one or more of the qualifying service offerings from the list below. The items should be included on the same delivery order, however should separate delivery orders be required, it is the Government's responsibility to notify IBM of each qualifying delivery order (maintenance and Services) available for this incentive. Should the Government procure a qualifying service as an addition to an existing hardware maintenance only order, both the maintenance and the added service would qualify for this Scope incentive. This incentive would be effective on the date the service is added and would appear on the following months' invoice.

Termination of all of the qualifying services will remove the Scope incentive from the maintenance prices. Additional funding will be required for maintenance upon the effective date of the service termination.

Scope Incentive - 2%

Enabled Services

7.xx IBM Operational Support Services

Resolve for zSeries

SoftwareXcel enterprise

SoftwareXcel basic edition

Support Line

Paperwork Reduction Incentive

This incentive is available to the procuring Government agency when funds are included on the delivery order for Machines to be added to maintenance after their warranty expiration.

Guidelines

1. The Government and IBM will review an inventory list to identify all Machines eligible for maintenance under this Schedule that are going to expire from warranty during the fiscal year.

2. The Government's fiscal year funding document would include Machines currently under maintenance as well as those expiring from warranty during the fiscal year.

3. Upon the warranty expiration date for each product identified on the order, IBM will automatically add the Machine(s) to maintenance.

4. The Government is encouraged to obligate maintenance funds for products procured during the fiscal year and which have the warranty expiring during the fiscal year to receive this incentive.

Paperwork Reduction Incentive: 3%

Additional Terms and Conditions

A. The ServiceElite offering is available in the United States, Puerto Rico, and the District of Columbia.

B. Base maintenance is a prerequisite to qualifying for the Scope Discount under the ServiceElite offering. IBM considers this prerequisite met regardless of whether the Machine is actually on maintenance or in a warranty status with a funded order for maintenance coverage upon warranty expiration.

C. Satisfaction Guarantee - If the Government is dissatisfied with a service procured under ServiceElite and provides written notice to IBM within 30 days of the dissatisfaction, IBM will make every effort to resolve the problem. If IBM cannot provide a remedy, and the customer is still dissatisfied, the customer will receive a credit equal to the prorated charge for the Service for the period of time they were dissatisfied. In addition the Service may be terminated without a penalty, however, the Scope incentive terms for terminating all of the qualifying services will apply.

D. Termination charges - The Government may terminate a machine or service from the Service- Elite contract with one month written notice.

Term Incentive Termination Charges: In the event of termination, the Government must provide a one month written notice to IBM, however, the following termination charges will apply if the Government agrees to a Term incentive and terminates a Machine or service during the Term. A termination charge of 2 months penalty for a 2 year term or 3 months penalty for a 3 year term will apply.

A customer may terminate a Machine or service without penalty if a Machine or service is replaced by an equivalent IBM Machine or service, or if the Machine is removed from productive use. The customer must notify IBM, in writing, indicating the replacement Machine or service. The effective date of termination must be coterminous with the replacement machine or service effective date.

Notwithstanding anything to the contrary in this Agreement, the Government's obligation for performance is contingent on the availability of appropriated funds from which payment for contract purposes can be made.

CHAPTER 5 TABLE OF CONTENTS

CHAPTER 5. SPECIAL ITEM 132-33: PERPETUAL SOFTWARE LICENSE.....1

TERMS AND CONDITIONS.....1
5.1 INSPECTION/ACCEPTANCE.....2
5.2 GUARANTEE/WARRANTY.....2
5.3 TECHNICAL SERVICES.....2
5.4 SOFTWARE MAINTENANCE.....2
5.5 UTILIZATION LIMITATIONS.....2
5.6 SOFTWARE CONVERSIONS - (132-32 AND 132-33).....4
5.7 DESCRIPTIONS AND EQUIPMENT COMPATIBILITY.....4
5.8 GENERAL INFORMATION.....4
5.9 ORDERS.....4
5.10 RISK OF LOSS.....5
5.11 COMPLIANCE VERIFICATION.....5
5.12 CHARGES, INVOICES, AND PAYMENTS.....5
5.13 CROSS FISCAL YEAR FUNDING.....7
5.14 LICENSE AGREEMENT FOR "ICA" PROGRAMS.....7
5.14.1 Date Of Installation.....8
5.14.2 Acceptance.....8
5.14.3 Warranty.....9
5.14.3.1 Remedies.....9
5.14.4 Program Components Not Used On The Designated Machine.....10
5.14.5 Distributed System License Option.....10
5.14.6 Specified Operating Environment.....10
5.14.7 Licensed Program Specifications.....11
5.14.8 Permission To Modify.....11
5.14.9 Early Shipment Of Licensed Printed Materials.....11
5.14.10 Program Testing.....11
5.14.11 Shipment Of Program License.....12
5.14.12 Term / Discontinuance.....12
5.14.13 Program Services.....12
5.14.14 IBM Version 6 Product Lifecycle Management Programs.....13
5.15 IBM PROGRAM LICENSE AGREEMENT (IPLA).....18
5.15.1 License grant.....19
5.15.2 Trade-ups, Updates, Fixes, and Patches.....20
5.15.3 Fixed Terms Licenses.....20
5.15.4 Money-Back Guarantee.....20
5.15.5 Warranty.....21
5.15.6 Licensee Data And Databases.....21
5.15.7 Compliance Verification.....22
5.15.8 Third Party Notices.....22
5.15.9 Charges.....22
5.15.10 Termination.....23
5.15.11 General.....23
5.15.12 Acquisition Of Software Maintenance.....23

5.15.12.1 IBM's Software Maintenance Includes: 23
5.15.13 Passport Advantage *27*
5.15.13.1 Passport Advantage Sub-Capacity Licensing Terms 34
5.15.14 IBM Software Secure Support via U.S. Citizens *37*
5.16 SOFTWARE PRICING OPTIONS 39
5.16.1 IBM System z Advanced Workload License Charges *39*
5.16.2 Extended License Charge (ELC) *45*
5.16.3 Multiple Operating System - PR/SM Option (MOSP) *46*
5.16.4 Programs With Graduated Charges *47*
5.16.5 Growth Opportunity License Charge (GOLC) *48*
5.16.6 Measured Usage License Charge (MULC) Option *48*
5.16.7 Parallel Sysplex License Charge (PSLC) *51*
5.16.8 Indexed Monthly License Charge (IMLC) *52*
5.16.9 System z New Application License Charge *53*
5.16.10 IBM System z Usage Pricing Charges *66*
5.16.11 Single-Version Charging *68*
5.16.12 IBM System z9 Workload License Charges *70*
5.16.13 EWLC, TWLC, zELC and z/OS.e License Charges *75*
5.16.14 Select Application License Charges for IBM System zUsage Pricing Charges *85*
5.16.15 IBM System z Programs Sub-Capacity Pricing *85*

CHAPTER 5. SPECIAL ITEM 132-33: PERPETUAL SOFTWARE LICENSE

TERMS AND CONDITIONS

Note: These terms and conditions are applicable to the licensing of IBM licensed programs, and are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM licensed programs that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472), the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item 132-33 will be available to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform services to overseas U.S. Government locations which are in support of national or mutual defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type) :

___X_____ 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

_____ 2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE

5.1 INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post-acceptance rights as defined in IBM's license terms (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

Acceptance – see IBM's ICA and IPLA license terms for the definition of Acceptance.

5.2 GUARANTEE/WARRANTY

IBM' standard commercial guarantee/warranty is specified in the terms and conditions of the ICA and IPLA license terms stated elsewhere in this chapter.

Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

5.3 TECHNICAL SERVICES

IBM provides technical support for software licenses as specified in its standard commercial license terms and conditions (see ICA and IPLA license terms).

5.4 SOFTWARE MAINTENANCE

IBM's Software maintenance terms are provided herein under the Acquisition of Software Maintenance and Passport Advantage terms.

5.5 UTILIZATION LIMITATIONS

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

1. Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

2. Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. By mutual agreement between IBM and the ordering activity, the software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
3. Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
4. (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative, for a temporary period of time; to copy computer programs for safekeeping (archives) or backup purposes; with IBM's written consent, to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
5. Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

5.6 Software Conversions - (132-32 And 132-33)

As a general rule, IBM does not offer full monetary credit to the Government when conversion from one version of the software to another which is made as the result of a change in operating system, or from one computer system to another;; however, IBM offering for the Acquisition of Software Maintenance or Passport Advantage includes terms on version updates for IPLA Licensed Programs. In addition, IBM has a software migration plan for its ICA Program Licensed products which is available under the terms of Single Version Charging. Such terms are stated elsewhere in this Chapter.

5.7 Descriptions and Equipment Compatibility

IBM provides a list of software products and their description in this pricelist. Additional details regarding the IBM software products can be found on IBM's internet site: www.ibm.com.

5.8 General Information

Under these terms and conditions, IBM will (1) furnish licensed programs to the Government, (2) furnish materials in support of such licensed programs, and (3) provide program services, as described herein. The Government agrees with respect to the licensed programs to accept the responsibility for (1) their selection to achieve the Government's intended results, (2) their installation, (3) their use, and (4) the results obtained there from. The Government also has the responsibility for the selection and use of, and results obtained from, any other programs, programming equipment, or services used with the licensed programs.

None of the licenses granted hereunder nor any of the licensed programs or copies thereof may be sub-licensed, assigned, or transferred between agencies or departments, including military departments without the prior written consent IBM. Any attempt to sub-license, assign, or transfer any of the rights, duties, or obligations under this Special Item 132-33 is void.

IBM is not responsible for failure to fulfill its obligations under this Special Item due to causes beyond its control.

The Government agrees that all of the terms and conditions of this Special Item applicable to restricted materials shall be applicable to materials, regardless of form, labeled "Restricted Materials of IBM" when distributed to the Government.

5.9 Orders

Software Acquisition is limited to commercial computer software defined in FAR Part 2.101.

Each order shall list the licensed program(s), feature(s), and/or material(s), and shall show the type and serial of the designated machine(s) on which each program and/or material are to be used, and the location of such machines. The Customer Requested Arrival Date shall be written into the order and the order shall be forwarded to IBM. In the event that IBM can't meet the Customer Requested Arrival Date, IBM shall notify the Government within 30 calendar days from the date of the certified mail receipt or the order receipt date of the Calculated Arrival Date

which it can meet. Otherwise, the Customer Requested Arrival Date automatically becomes the Calculated Arrival Date.

5.10 Risk Of Loss

If licensed programs in a tangible form are lost or damaged during shipment from IBM, IBM will replace such licensed programs and program storage media at no additional charge to the Government.

If licensed programs are lost or damaged while in the possession of the Government, IBM will replace such licensed programs at the then current commercial charges, if any, for processing, distribution, and/or program storage media. Such charges will be outside the scope of this Contract.

5.11 Compliance Verification

The Government agrees to create, retain, and provide to IBM and its auditors written records, system tool outputs, and other system information sufficient to provide auditable verification to IBM that your installation and use of Licensed Programs is in compliance with the terms herein. Unless otherwise mutually agreed to, upon 30 days written request, and no more frequently than annually, IBM may audit the use of programs provided under any order.

You further agree that IBM and its auditors may verify your compliance with the terms herein by, among other things, having reasonable access to premises in which you use or install Licensed Programs. IBM agrees to use personnel with appropriate security clearances when required. You agree to pay promptly any additional charges to which You become obligated as determined by an audit. The provisions in this paragraph shall remain in effect during the term of this Agreement and for a reasonable time thereafter to confirm deployment and use of the Licensed Programs during the term of this Agreement

5.12 Charges, Invoices, And Payments

The charges applicable to each licensed program may be a one-time charge, an upgrade charge, a periodic charge and any initial or process charge.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size). The Government agrees to provide actual usage data if IBM specifies. If the Government changes its environment such that it impacts use charges (for example. change to processor size or configuration for Programs), the Government agrees to promptly notify IBM and provide a modification for any applicable charges. IBM does not give credits or refunds for charges already due or paid. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

Initial License Charge (ILC):

In addition to some programs which have a monthly license charge, an ILC charge will apply. The ILC is billed along with the first MLC invoice (see Periodic Charges below).

One time Charges (OTC):

For new program license orders, in the event a price increase occurs from the date of signature on the delivery order to the date of receipt by IBM, IBM will honor the lower price of the order if received within the validity date on the proposal quote or if the order was received within 15 days of the signature date on the delivery order. Should the order be received after the validity date of the proposal or the 15 day period, a new or modified order will be required that reflects the current catalog price. IBM will invoice the Government for OTC software products upon shipment.

Periodic Charges:

S/390 and zSeries Platform Programs:

Recurring charges for S/390 and zSeries platform programs, which may be monthly license charges (MLC) or annual license charges (ALC), will be calculated in full calendar month increments.

For new installations and product alterations (other than discontinuances) occurring on the first of a month, charges will begin immediately.

For new installation and products alterations occurring after the first day of the month, charges will begin the first day of the month after installation.

Products discontinued the first of a month or during a month will be charged through to the end of the month.

NON S/390 and zSeries Platform Programs:

Other platform programs with recurring charges (MLC or ALC charges) will begin billing upon the Date of Installation. If applicable, charges will be prorated based on a thirty (30) day month.

All Platform Programs:

Charges for renewal(s) of licensed programs which have been withdrawn from marketing are specified in this price list.

Charges will be invoiced at the end of the period for which the charges accrue.

For new program license orders, in the event a price increase occurs from the date of signature on the delivery order to the date of receipt by IBM, the periodic charge shall be the charge in effect upon the Date of Installation.

Primary License Charge (PLC):

A Primary License Charge applies to programs which are billed as an Annual License Charge. The PLC is billed as an one time charge upon the Date of Installation of the licensed program.

Program Upgrade Charge:

For selected licensed programs, IBM may designate a replacement program which is normally a new version of an existing program. If the product was offered as OTC, the replacement version may be offered for a Program Upgrade Charge, which is a one-time charge that is less than the full OTC amount.

The Government may qualify for the Program Upgrade Charge, if the prior version of the licensed program is discontinued upon installation of the new version.

Process Charge:

A process charge is usually a distribution charge or media charge for machine-readable materials.

Charges will be due upon receipt by the Government of the licensed programs to which such charges apply and are not refundable.

Payment:

Per FAR 52.212-4 payment is due in accordance with the Prompt Payment Act.

In the event that the Government is of the opinion that any charges or credits on an invoice are not billed properly, every effort should be made to promptly pay the portion of the invoice not in question and give detailed written notice to IBM concerning the items in question.

5.13 Cross Fiscal Year Funding

IBM will accept orders which cross fiscal years provided the ordering agency's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period. The Government's purchase order shall specify the availability of funds and the period for which funds are available.

5.14 License Agreement For "ICA" Programs

Upon acceptance of a Government order, IBM grants a non-exclusive, non-transferable license to use the Program. Programs are owned by IBM or one of its subsidiaries and are copyrighted and licensed (not sold).

Authorized Use

Under each license, IBM authorizes the Government to:

A. Use the ICA Program's machine-readable portion on only the Designated Machine unless--

1. The Designated Machine is inoperable. The Government may then use the Program on another machine temporarily.
2. The Designated Machine cannot assemble or compile the Program. The Government may then assemble or compile the program on another machine.
3. If the Government changes a Designated machine previously identified to IBM, you agree to notify IBM of the change and its effective date.

B. Use the ICA Program to the extent of the Government's authorization obtained for the Program(s),

C. Make and install copies of the ICA Program to support the level of use authorized, provided the Government reproduces the copyright notices and any other legends of ownership on each copy or partial copy, and

D. Use any portion of the ICA Program IBM (1) provides in source form, or (2) mark restricted (for example, "Restricted Materials of IBM") only to

a. Resolve problems related to the use of the Program, and

b. Modify the ICA Program so that it will work together with other products.

Government's Additional Obligations

A. The Government agrees to comply with any additional or different terms in its Licensed Program Specifications may contain, including other offerings stated herein.

B. Ensure that anyone who uses the Program (accessed either locally or remotely) does so only for the Government's authorized use and complies with these terms; and

C. Maintain a record of all copies and provide it to IBM at its request

Actions the Government May Not Take

The Government agrees not to do any of the following:

A. Sublicense, assign, or transfer the license for any Program between agencies or departments, including military departments;

B. Sublicense, assign, rent, or lease the Program to any third party without IBM's prior written consent;

C. Reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of a contractual waiver.

5.14.1 Date Of Installation

For a Program:

A. Basic license: The second business day after the Program's standard transit allowance period,
B. Copy, the date specified in a Transaction Document, on which IBM authorizes the Government to make a copy of the Program; or

C. Chargeable component, the date the Government distributes a copy of a chargeable component in support of the Government's authorized use of the Program.

5.14.2 Acceptance

A. On the second business day after the Program's standard transit allowance period, or receipt of the Program, if earlier.

B. For process charges, the date the materials for which the process charges apply are received by the Government.

Not withstanding anything herein to the contrary, the parties agree as follows:

(i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

5.14.3 WARRANTY

Each licensed program which is designated in the Price List as warranted will conform to the Specifications in effect when shipped to the Government if properly used in a Specified Operating Environment. The warranty period for a Program commences on its Date of Installation and expires when its Program Services are no longer available. Thereafter, IBM will provide program services on a chargeable basis as described elsewhere in this SIN. During the warranty period, IBM provides defect related Program Services without charge.

Program Services are available for a warranted Program for at least one year following its general availability.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless specified otherwise, IBM provides Materials and non-IBM products, without warranties of any kind. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

5.14.3.1 REMEDIES

If a Program does not function as warranted during the first year after the Government obtains the license, and IBM is unable to make it do so, the Government may return the program and receive a full refund of the amount paid. To be eligible, the Government must have obtained the license while Program services were available for it.

In no event will IBM be liable for any damages arising from performance or nonperformance of the licensed program during the licensed program testing period or for any damages caused by the Government's failure to perform the Government's responsibilities, or for any claim against the Government by any other party, except as provided in General Information terms for "Patent and Copyright Indemnity," and "Limitation of Liability."

5.14.4 Program Components Not Used On The Designated Machine

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. The Government may make copies of a component and its documentation in support of its authorized use of the Program provided the Government. For chargeable components, the government agrees to notify IBM of the component's actual date of distribution which is its Date of Installation.

5.14.5 Distributed System License Option

A. For certain Programs the Government may make a copy under a Distributed System License Option (called a "DSLO" copy). When ordering additional licenses for such a licensed program, the Government must designate whether an additional Basic or DSLO License is requested. IBM charges less for a DSLO license than for a Basic license. For each DSLO License, the Government will:

1. Have a Basic license for the Program;
2. Provide problem documentation and receive Program Services (if any) only through the location of the Basic License;
3. Distribute to, install, and test on the DSLO's Designated Machine any new release, correction or bypass provided by IBM to the Basic License.
4. IBM does not provide a testing period for DSLO copies.

B. Unless the Government designates another Basic License, notice of discontinuance of a Basic License shall be notice of discontinuance of all DSLO licenses for that Basic License.

5.14.6 Specified Operating Environment

The specified operating environment is the environment in which a licensed program is designed to operate, which may be one or more IBM machine types and, in most instances, in conjunction with other IBM equipment and programs. The Licensed Program Specifications, for each warranted licensed program, will state the environment in which the licensed program is designed to operate. For licensed programs distributed on an "AS IS" basis the Specified Operating Environment will be stated in a notice of availability.

Program services for a licensed program used in other than a Specified Operating Environment are subject to limitations occasioned by the differences between the Specified Operating Environment and the Government's operating environment and by the extent of the local IBM representative's knowledge of the Government's equipment and programs. Such program services will be subject to the following conditions:

The Program Service project office will only respond to defects which will occur when they operate the licensed program in a Specified Operating Environment.

Furthermore, the IBM representative will only operate a machine designated in the order if it was marketed or manufactured by IBM. IBM will have the right to make additional charges, in

accordance with Appendix C of this Price List, for any additional effort required to perform these program services.

5.14.7 Licensed Program Specifications

For each licensed program which is warranted, IBM will have published, at the time that licensed program becomes available, a document entitled "Licensed Program Specifications." Such Licensed Program Specifications may be updated by IBM from time to time and such updates may constitute a change in specifications.

5.14.8 Permission To Modify

The Government may modify the program's machine readable instructions or data and merge them into another program to form an updated work for the Government's own use; provided that, upon discontinuance of the licensed program, the licensed programs will be completely removed from the updated work and dealt with under this Special Item as if permission to modify or merge had never been granted. Any portion of the licensed programs included in such an updated work will continue to be subject to all terms of this Special Item.

5.14.9 Early Shipment Of Licensed Printed Materials

When the Government has issued and IBM has confirmed an order for a generally available licensed program, licensed program materials which are provided by IBM in printed form will, upon request, be shipped up to six months prior to shipment of the machine readable portion of the licensed program. The licensed printed materials, thus provided, may not be copied in any form for any purpose.

If the Government does not request that the machine readable portion of the licensed program materials be shipped within six months following the date of shipment of the licensed printed materials, the Government will discontinue the license for the program and return or destroy the printed materials.

Program services, if any, for the licensed program will not be provided prior to shipment or delivery of the machine readable portion of the licensed program materials.

5.14.10 Program Testing

IBM provides a testing period for certain ICA Programs to help the Government evaluate if they meet your needs. If IBM offers a testing period, it will start 1) the second business day after the ICA Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. IBM will inform you of the duration of the ICA Program's testing period.

IBM does not provide testing periods for DSLO copies.

In the event that the licensed program is used for productive purposes during the testing period, the testing period will be deemed to have ended as of the date upon which the Government commences productive use.

5.14.11 Shipment Of Program License

Subject to conditions beyond IBM's control, licensed programs listed in this Price List will be shipped to the Government in time to meet the calculated arrival date confirmed by IBM.

Except when otherwise specified in this Price List, licensed programs will be shipped to the Government without shipping charge. Any special shipment requested by the Government will be at the Government's expense.

5.14.12 Term / Discontinuance

Orders are effective from the date on which they are received by IBM and will remain in effect until cancelled by the Government upon written notice.

For S/390 and zSeries platform programs, the effective date of discontinuance will be the first of the month following IBM's receipt of the Government's written notice.

For all other software platform products IBM requires a one month's written notice for discontinuance. The Government may terminate a License at any time during the test period.

Whenever a license is cancelled or terminated by either party, the Government must promptly destroy all copies of the Program. The Government may retain a copy for archive purposes.

Licenses for certain replacement Programs may be obtained for an upgrade charge. When the Government obtains licenses for these replacement "ICA Programs", the Government agrees to terminate the license of the replaced Program when charges become due, unless IBM specifies otherwise.

IBM may discontinue any license upon written notice if the Government fails to comply with any of the terms and conditions of this Special Item. Such discontinuances will terminate the Government's authorization to use the Program.

Notice should also be provided for a discontinuance which occurs at the end of the fiscal year, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. All orders automatically terminate on September 30; however, ordering offices are instructed to notify IBM in writing one month prior to the expiration of the order if the license is to be discontinued at the end of the fiscal year. Renewal of an order under the new fiscal year will be required if the license is to be continued.

5.14.13 Program Services

For each licensed program the period of program service, if any, to be provided for a current release of the licensed program is specified in IBM's GSA website

www.ibm.com/easyaccess/gsa. Program service will commence at the beginning of the licensed program testing period or, if there is no testing period for that license, when periodic charges are due. Program service will be subject to the provisions of "SPECIFIED OPERATING ENVIRONMENT," herein.

IBM provides Program Services for warranted "ICA" Programs per the terms stated herein. Terms for "Other IBM Program" Program Services are described in Item 5.8. If IBM can reproduce the reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of a Program. Program Services are provided 1) on an on-going basis, IBM will provide at least six months' written notice before terminating this service for a Program, 2) until the date identified, or 3) for a period specified.

5.14.14 IBM Version 6 Product Lifecycle Management Programs

The terms herein for IBM Product Lifecycle Management Version 6 Programs ("Attachment") are in addition to those stated in the License Agreement for "ICA" Programs (Item 5.14). These terms apply to a Product Lifecycle Management Program that is licensed under the ICA Program License terms and is at Version 6 ("V6 PLM Program").

Capitalized terms used but not defined herein have the same meaning as given to them in the Agreement.

1. Definitions

Annual License Charge ("ALC") or **Recurring License Charge** ("RLC") is a recurring charge, for (i) an irrevocable (subject to the terms of the Agreement concerning license and agreement termination), nonexclusive and non-transferable right to use subsequent software releases of a specific V6 PLM Program that become generally available during the term of the ALC/RLC and (ii) associated Support Services.

Concurrent License – a license that authorizes use for a maximum number of simultaneous Users and Extended Enterprise Users (both as defined below), if applicable. A Concurrent License may also be referred to as a "**Shareable License**."

Development Tool Kit - a V6 PLM Program specifically designed for application or content development. Development Tool Kits are either identified (a) with "ENOVIA Studio" in the V6 PLM Program reference or (b) as Development Tool Kits in the product portfolio available at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012981

Extended Enterprise User - individual employee of an entity conducting business with Customer remotely through the Internet, such as a supplier or customer.

Machine-based License - a license that authorizes use on the number of Machines for which the V6 PLM Programs have been ordered. A Machine-based License may also be referred to as a "Nodelock License."

Named User - a User (as defined below) or Extended Enterprise User authorized by Customer with a unique user name and password to use the V6 PLM Programs running on a single user machine at any given time.

Primary License Charge ("PLC") is a one-time charge for the media and license keys for a specific V6 PLM Program, together with an irrevocable (subject to the terms of the Agreement concerning license and agreement termination), nonexclusive, and non-transferable right to use that Program.

System License - a license to use certain V6 PLM Programs for a specific database instance and/or as may be otherwise indicated by IBM. A minimum number of Named User Licenses of identified prerequisite V6 PLM Programs may be required in order to access a System License.

User - (a) a Customer employee or (b) an individual employee of Customer's consultant or subcontractor who accesses the V6 PLM Programs on Customer machines located on Customer premises to perform work for the internal needs of Customer.

Yearly License Charge ("YLC") is a recurring charge for (i) a nonexclusive and non-transferable right to use a V6 PLM Program, (ii) current and subsequent software releases of a specific V6 PLM Program that are or become generally available during the term of the YLC, and (iii) associated Support Services.

2. License

a. V6 PLM Programs are licensed under a Named User, System, Concurrent, or Machine-based License, as specified at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012981 or in a Transaction Document.

b. Customer may replace Named Users as necessary to reflect permanent personnel changes, provided that the number of individuals authorized to use the V6 PLM Program(s) does not exceed the maximum number of Named User authorizations Customer has licensed from IBM.

2.1 Annual License Charge ("ALC")/Recurring License Charge ("RLC")

For the first year of each license of each V6 PLM Program, Customer will pay the ALC/RLC together with the PLC. Support Services provided under the ALC/RLC are more fully described in section 3 Support Services below.

2.2 Use of Certain V6 PLM Programs by Extended Enterprise Users and by Remote Access

a. The following terms apply to V6 PLM Programs specified at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012981 as permissible for use by Extended Enterprise Users:

A Named User that is an Extended Enterprise User may access the applicable Designated Machine for the sole purpose of enabling the Extended Enterprise User to conduct business with Customer, provided that any such Extended Enterprise User be limited to use of the V6 PLM Programs (a) solely as configured and deployed by Customer and (b) solely in connection with its performance of services for and on behalf of Customer, and not for such Extended Enterprise User's own or another's account or for the purpose of hosting, modifying, or otherwise using or maintaining the V6 PLM Program(s). Customer agrees that Customer is responsible for ensuring that any Extended Enterprise User uses V6 PLM Programs in compliance with the terms of the Agreement, including the terms

stated herein (Attachment). Customer further agrees that any breach by an Extended Enterprise User of the terms of the Agreement, including those of this Attachment, will be deemed a breach by Customer.

b. The following terms apply to V6 PLM Programs specified at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012981 as permissible for use by Remote Access:

Named Users or Extended Enterprise Users may access and use the licenses to these V6 PLM Programs remotely via the Internet from any country, and only with a specific Designated Machine, except inside the Customer Enterprise where a Named User may access more than one Designated Machine.

2.3 Use of Development Tool Kits in the Provision of Third Party Services and in the External Distribution of Complementary Applications

a. Customer is licensed to distribute Customer's applications developed with the Development Tool Kits ("V6 Complementary Applications") to Customer's subcontractors and to direct and indirect suppliers solely for performance of work by such subcontractors and suppliers for Customer's benefit. This license includes Customer's right to authorize Customer's subcontractors and direct and indirect suppliers to use, execute, reproduce, display, perform and distribute internally the V6 Complementary Applications.

b. This Attachment does not grant any right or license to Customer to use the Development Tool Kits in the provision of services to a third party. Customer must obtain agreement from Dassault Systemes S.A. to obtain such rights or licenses.

This Attachment does not grant any right or license to Customer to use the Development Tool Kits to make the V6 Complementary Applications generally available. In this context, "generally available" means the general release or other distribution of the V6 Complementary Applications as commercially available, directly or through other parties, for use by end user customers. Customer must obtain agreement from Dassault Systemes S.A. in order to do so.

2.4 Use of Other V6 PLM Programs for Third Party Services

Customer may use the V6 PLM Programs for added-value engineering and or implementation services. Added-value engineering or implementation services are services to (i) deliver to a third party end user any data, information or deliverable generated specifically for the third party from use by Customer of the V6 PLM Programs; or (ii) facilitate such specific third party's use of the V6 PLM Programs under the third party's end user license, but not for the purpose of developing software code for (1) general distribution by any means, and whether alone or bundled or delivered with any product, data, information, software, or other element, or (2) any services that do not add value attributable to human skills, such as, without limitation, in a data services operation or as an applications service provider. Further, Customer may not represent or imply to any party that it is an authorized or certified provider of services for IBM or Dassault Systemes SA.

2.5 Third Party Software

The provisions of this paragraph do not apply to the extent they are held to be invalid or unenforceable under the law that governs this license. Certain V6 PLM Programs may either

contain third party software components or be third party software products to which certain specific terms apply, and is considered "Separately Licensed Code." The specific third party software that is Separately Licensed Code may be found at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012982.

IBM Separately Licensed Code is licensed to Customer under the terms of the applicable third party license agreement(s) set forth in the Licensed Program Specifications or NON_IBM_LICENSE file(s) that accompanies the Program. Notwithstanding any of the terms in the Agreement, or any other agreement Customer may have with IBM, the terms of such third party license agreement(s) governs Customer's use of all Separately Licensed Code unless otherwise noted below. Customer agrees to be bound by and to comply with such terms.

If Customer does not agree to the terms of these third party license agreements, Customer may not use the Separately Licensed Code.

Note: Notwithstanding any of the terms in the third party license agreement, the Agreement, or any other agreement Customer may have with IBM:

a. IBM provides this Separately Licensed Code to Customer **WITHOUT WARRANTIES OF ANY KIND;**

b. IBM DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SEPARATELY LICENSED CODE;

c. IBM is not liable to Customer, and will not defend, indemnify, or hold Customer harmless for any claims arising from or related to the Separately Licensed Code; and

d. IBM is not liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages including, but not limited to, lost data, lost savings, and lost profits, with respect to the Separately Licensed Code.

2.6 Excluded Components

Notwithstanding the terms of any other agreement Customer may have with IBM or any of its related or affiliated companies (collectively "IBM") or with any of the third parties that provide IBM products ("Third Parties"), the following terms apply to all "Excluded Components" identified at http://www.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27012982

a. all Excluded Components are provided on an "AS IS" basis;

b. IBM AND THIRD PARTIES DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE;

c. IBM and Third Parties will not be liable to Customer or indemnify Customer for any claims related to the Excluded Components; and

d. IBM and Third Parties will not be liable for any direct, indirect, incidental, special exemplary, punitive or consequential damages with respect to the Excluded Components:

Notices and important information that IBM is required to provide to Customer with respect to the Excluded Components, may be found in the Licensed Program Specifications that accompanies the Program.

Customer's use of the Excluded Components is governed by the terms of the Agreement and not by any terms that may be contained in a NOTICES file(s). The terms contained in the Agreement are offered by IBM and not by any other party.

3. Support Services

In consideration for payment of ALC or RLC for each V6 PLM Program license, IBM also provides the following "Support Services" to Customer:

a. Program Services; and

b. assistance with program-specific, task-oriented questions about the installation, usage and operation of the products

For more information about services provided, see

http://www-1.ibm.com/support/docview.wss?rs=886&context=SW860&uid=swg27013006.

At any time after the first year of commencement of ALC/RLC charges, Customer may terminate subsequent ALC/RLC for a V6 PLM Program on one month's written notice to IBM. If Customer terminates ALC/RLC on a V6 PLM Program license, the ALC/RLC termination will apply to all licenses of that V6 PLM Program. Customer will no longer (i) be entitled to Support Services and (ii) have any right to new releases, for any of the licenses of that V6 PLM Program.

In addition, Customer must take steps necessary to avoid using any fixes or releases to which Customer is not entitled as a result of Customer's termination of ALC/RLC.

Customer may reinstate ALC/RLC, provided such reinstatement is activated for all licenses of a V6 PLM Program held by Customer, and Customer pays a reinstatement charge for the period from the date of termination of Support Services to the date of reinstatement of such ALC/RLC.

4. Warranty

Notwithstanding other terms of the Agreement, the warranty period for a V6 PLM Program ends when the Support Services for the V6 PLM Program are no longer available or Customer terminates ALC/RLC, whichever occurs first. If Customer reinstates ALC/RLC and V6 PLM Support Services are still available, the warranty period will also be reinstated.

Neither party is relying on any representation that is not specified in this Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: 1) performance or function of any Product or system, other than as documented in its Specifications; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve.

5.15 IBM PROGRAM LICENSE AGREEMENT (IPLA)

LICENSED DETAILS FOR "OTHER IBM PROGRAMS" (i.e., OTC SOFTWARE, DISTRIBUTED SOFTWARE)

The license details below are for certain products within IBM's Schedule designated with a "P" in the License Type category of the software pricelist or the Licenses within the Passport Advantage pricelist. By downloading, installing, copying, accessing, or using the Program, the Government (Licensee) agrees to the terms stated herein. If the Government does not agree to these terms:

- Do not download, install, copy, access, click on an "accept" button, or use the Program; and
- Promptly return the unused media, documentation, and Proof of Entitlement to the party from who it was obtained for a refund of the amount paid. If the Program was downloaded, destroy all copies of the Program.

Documentation entitled "License Information" will be enclosed with the Program and contains additional information and terms and conditions concerning the Program and any related Program Services. The Program's LI is available at http://www.ibm.com/software/sla/.

Definitions

"Authorized Use" – 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.

"IBM" - International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at http://www.ibm.com/software/sla. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with 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).

"Proof of Entitlement" – evidence of the Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. IBM does not provide the Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the Program was obtained, provided that it specifies the Program name and Authorized Use obtained.

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

Agreement Structure

The IPLA consists of the terms and conditions as stated herein, the General terms of Chapter 1 of this Contract, the LI, and the PoE and is the complete agreement between the Government and IBM regarding the use of the Program. It replaces any prior oral or written communication

between the Government and IBM concerning the Government's use of the Program. The terms of the LI may replace or modify sections of this IPLA.

Acceptance

The Government's acceptance of a Program is the earlier of the second business day after the Program's standard transit allowance period, or receipt of the Program, when IBM provides the Government authorization to download the product via the Proof of Entitlement.

Not withstanding anything herein to the contrary, the parties agree as follows:

(i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

5.15.1 LICENSE GRANT

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

Use of the Program:
IBM grants to the Government a nonexclusive license to:

1) Use the Program up to the Authorized Use specified in the PoE and
2) Make and install copies to support such Authorized Use specified in the PoE, and
3) Make a backup copy, all provided that:
   a. The Government has lawfully obtained the Program and complies with the terms as stated herein.
   b. the backup copy does not execute unless the backed-up Program cannot execute;
   c. the Government reproduces all copyright notices and other legends of ownership on each copy, or partial copy of the Program.
   d. The Government ensures that anyone who uses the Program (accessed either locally or remotely) does so only on the Government's behalf and complies with the terms stated herein.
   e. The Government does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this IPLA Agreement; 2) reverse assemble, reverse compile, or 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 Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this IPLA 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, the Government should contact IBM or the party from whom the Government obtained the Supporting Program.)

This license applies to each copy of the Program that the Government makes.

Transfer of Rights and Obligations:

The Government may transfer a Program and all the Government's license rights and obligations to another party only if that party agrees to the terms of the IPLA. If the license is terminated for any reason by either party, the Government is prohibited from transferring the Program to another party. When the Government transfers the Program, it must also transfer a copy of the IPLA terms and conditions including the LI, and the Proof of Entitlement for the Program. The transfer of the license rights and obligations terminates the current Government user's authorization to use the Program under the Proof of Entitlement. The Government may not transfer a portion of 1) the Program or 2) the Program's Authorized Use.

5.15.2 Trade-ups, Updates, Fixes, and Patches

5.15.2.a Trade-ups

It the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

5.15.2.b Updates, Fixes, and Patches

When the Government receives an update, fix, or patch to a Program, the Government 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 the terms stated herein for the IPLA Agreement. If the Program is replaced by an update, the Government agrees to promptly discontinue use of the replaced Program.

5.15.3 Fixed Terms Licenses

If IBM licenses the Program for a fixed term, the Government's license is terminated at the end of the fixed term unless the Government provides a funded delivery order to renew it.

5.15.4 Money-Back Guarantee

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

5.15.5 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).

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. The Government is responsible for the results obtained from the use of the Program.

During the Warranty Period IBM provides the Government 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 http://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, the Government may return the Program and its POE to IBM, or the party from who the Government obtained the Program, and receive a refund of the amount the Government paid. After returning the Program, the Government's license terminates. If the Government downloaded the Program, the Government should contact IBM, or the party from whom the Program was obtained, for instructions on how to obtain the refund.

Exclusions

THESE WARRANTIES ARE THE GOVERNMENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE.

THE WARRANTIES IN THIS SECTION ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS ABOVE, HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS IPLA AGREEMENT.

5.15.6 LICENSEE DATA AND DATABASES

To assist the Government in isolating the cause of a problem with the Program, IBM may request that the Government 1) allow IBM to remotely access the Government's system or 2) send the Government's information or system data to IBM. However, IBM is not obligated to provide such assistance unless, IBM and the Government enter a separate written agreement under which IBM agrees to provide to the Government that type of technical support which is beyond IBM's warranty obligations in this IPLA 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, IBM may use IBM entities and subcontractors (including in one

or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

The Government remains responsible for 1) any data and the content of any database the Government 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. The Government will not send or provide IBM access to any personally-identifiable information, whether in data or any other form.

5.15.7 Compliance Verification

See Compliance Verification terms under 5.11 of this Chapter. For the purposes of the IPLA Agreement the License terms means 1) the terms of this IPLA 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/sofwarepolicies/**), including but not limited to those polices concerning backup, sub-capacity pricing, and migration.

Resolution – IBM will notify the Government in writing if any such verification indicates that the Government has used any program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. The Government agrees to pay IBM for charges associated with 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges as a result of such non-compliance.

5.15.8 Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to the Government under this IPLA Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for the Government'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 the government 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 the Government's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

5.15.9 Charges

The amount payable for a Program license is a one-time charge. Charges are based on Authorized Use obtained which is specified in the POE. If the Government wishes to increase its Authorized Use, the Government must notify IBM and pay any applicable charges. IBM does not give refunds or credits for charges already due or paid.

For Programs delivered electronically in the United States for which the Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

The Government agrees to be responsible for any sales and use tax liabilities that may arise as a result of Government's subsequent redistribution of Programs after delivery by IBM. If a customs duty, tax, levy or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the Government was originally granted the license, then the Government agrees that it is responsible for, and will pay, any amount imposed.

5.15.10 Termination

IBM may terminate the Government's license if it is determined the Government failed to comply with the terms stated herein. If either party terminates the license, the Government must destroy all copies of the Program. Any terms of this IPLA that by their nature extend beyond the termination of the Program remain in effect until fulfilled and apply to both party's respective successors and assignees.

5.15.11 General

Neither party is relying on any representation not specified in this IPLA Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in the Warranty section above; 2) the experiences or recommendations of other parties; or 3) any results or savings that the Government may achieve.

5.15.12 Acquisition Of Software Maintenance

The terms and conditions govern the acquisition of Software Maintenance (SWM), which may also be referred to as Software Subscription and Support (S&S). Software Maintenance is available for when purchasing IPLA Software licenses outside of Passport Advantage. IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

For new license purchases, Software Maintenance is one year, or the period IBM specifies in the Proof of Entitlement which accompanies new license purchases, or other document that IBM provides to the Government, beginning on the date of acquisition and ending on the same day of the corresponding month of the following year.

5.15.12.1 IBM's Software Maintenance Includes:

The Government agrees to:

1. To acquire Software Maintenance at the same authorized level of use as the Program for which you are acquiring it, as well as all copies of the Program at the same location. This

includes Programs that the Government already acquired and those that you may acquire subsequently.

2. To be responsible for the results obtained from the use of the Software Maintenance;
3. To remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission to assist you in isolating the software problem cause;
4. To provide sufficient, free, and safe access to the Government's facility for the fulfillment of IBM's obligations.
5. To have specified equipment or programs installed at your location if Software Maintenance is provided through a telecommunications link, and
6. Not to assign, or otherwise transfer, this Agreement or the Government's rights stated herein, or delegate its obligations, without prior written consent. Any attempt to do so is void.

Software Maintenance Transferability:

The Government may transfer their Software Maintenance only to a location that is within its agency or department provided that 1) the applicable Program is transferable and is transferred in accordance with its license terms and 2) the entity receiving the Program agrees to the terms herein. Transferring between military departments requires prior written consent from IBM.

Termination:

The Government may terminate the Support by providing IBM one month written notice. Such notice should be provided to IBM for termination at the end of the Government's fiscal year/anniversary date for the renewal, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. If not terminated, a delivery order must be issued effective the first day of the succeeding fiscal year or contract year to ensure there is no lapse in time subjecting the Government to a Software Maintenance After License Charge.

Withdrawal:

IBM may withdraw Software Maintenance for a Program by publishing a notification of withdrawal at www.ibm.com/software/supportlifecycle not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which the Government has provided payment and IBM has not yet fully provided Software Maintenance to you, IBM will either continue to provide Software Maintenance until the end of the current Support Period or give you a prorated refund.

Warranty:

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its current description.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which we are not responsible.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR

CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free provision of Software Maintenance.

Charges: One-Time-Charge with options to renew on the yearly anniversary date. Support Charges may vary, depending on, for example, the machine (type/model), the Program selected, or group of Programs. If the Government returns a Program for a refund as allowed under its license terms, IBM will terminate, and refund any charges paid for Software Maintenance ordered with the Program.

Programs running on IBM distributed platforms (e.g., IBM Power Systems), IBM System i, IBM System p, or IBM System x or equivalent.

IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

General:

1. IBM makes available to you the most current commercially available version, release or update to all of the Eligible Programs for which you acquire Software Subscription and Support, should any be made available. The Government's right to upgrade to a new version, release or update may be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed. Information on ordering versions, releases, or updates can be found at http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss and selection the Entitled Software Update ("EUS") screen tab.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and b) code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during normal business hours (normal business hours are 8 a.m. to 5 p.m. in the local time zone where you receive this Service, Monday through Friday, excluding national holidays). 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 Guide, which may be found at www.14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details. A 24x7 (every day of the year) all severity option is available at extra charge. During normal business hours, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than normal business hours, IBM's response time objective for critical problems (Severity 1) is two hours and if you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than normal business hours, IBM's response time objective is within two hours of the start of normal business hours on the next business day. IBM's initial response (either voice or electronic) may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

4. In some instances, IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.
6. The initial Support Period begins on the date that IBM makes the Program available to you. If the Program is part of an iSeries grouped offering, then the Initial Support Period duration will be adjusted so that the expiration coincides with that of the other Programs in the group. In such event, the Initial Support Period may be less than one year.
7. This Service is provided by United States personnel solely for servers that are located within the United States. For calls that originate from outside of the United States: 1) toll free telephone access is not available, 2) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your designated Point of Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the United States server location, and 5) the diagnosis and repair of data encryption will be discussed only with personnel at the United States server location.

Eligible Programs: Licensed programs for which this Service is available are listed at http://www.ibm.com/services/sl/swm/ or may be obtained from your IBM marketing representative. The listing of Eligible Programs contains the last date of service for each respective release of licensed programs. IBM will support only current releases. It is your responsibility to insure that, when calling in for service, your software is current.

Software Maintenance After License Fee: The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order.

Software Maintenance for Programs running in the System z environment or equivalent:

1. Eligible Programs: Licensed Programs for which Support and Subscription is available are listed at www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo/. Click on Exhibits: Subscription and Support.
2. Support Period: One year. When you order Support and Subscription (S&S) with a Program, the initial Support Period begins on the date that IBM makes the Program available to you. If you terminate S&S, IBM does not issue credit for the unused portion of a Support Period. Subsequent Support Periods begin on the day following the end of the preceding Support Period.
3. Anniversary Adjustment: When you acquire S&S initially or resume it, or prior to the end of the then current Support Period for renewals, you may request that the Support Period duration be adjusted to end at a month of your choice. If you do not choose a date, IBM will inform you of the end date. The Support Charge will be pro-rated accordingly.

4. Support and Subscription: For the unmodified portion of a Program, and to the extent problems can be recreated in the Specified Operating Environment, includes:
   a. Code Corrections: code to correct reported, substantial deviations from the Program's then applicable Specifications;
   b. Fixes: existing Code Corrections, restrictions or known bypasses for reported problems;
   c. Program Updates: periodic releases of collections of Code Corrections, Fixes, functional enhancements (including modifications to accommodate applicable statutory or regulatory changes) and new versions and releases to the Program and documentation.
   d. Technical Assistance: a reasonable amount of remote assistance via telephone, mail, facsimile (fax) or e-mail to address suspected Program defects. Technical assistance is available from the IBM support center. Additional details regarding Technical Assistance, including IBM contact information, are provided in the Software Support Handbook at www14.software.ibm.com/webapp/sas/f/handbook/home.html
   e. S&S does not include assistance for 1) design and development of applications, 2) Customer's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible for under these terms.
   f. Resumption Fee: Equal to the total of all Support charges that you would have paid during the lapse interval (i) had you not declined S&S at the time you acquired the license for a Program and now wish to acquire S&S or (ii) if you wish to resume S&S that you had previously terminated. A Support Period in such an instance begins on the date that IBM accepts your order.
   g. Support Upgrade: If you upgrade S&S due to an increase in the level of use of a license, any increase to the Support Charge will be pro-rated to the next anniversary.

Renewal: IBM will renew expiring software maintenance provided a funded delivery order is received by the end of the Support Period. Subsequent Support Periods begin on the day following the end of the preceding Support Period.

5.15.13 Passport Advantage

Under these IBM Passport Advantage terms and conditions (called "PA terms"), IBM provides the Government a way to obtain authorizations to use, update and support selected Programs obtained from IBM. The terms and conditions stated herein for Passport Advantage will prevail in lieu of any other terms and conditions included in the documentation provided by IBM when the Government enrolls in Passport Advantage.

Products eligible under Passport Advantage include commercially available IBM Programs, Support for specified 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, annual IBM Software Maintenance renewals, and IBM Software Maintenance Reinstatement, and Selected Support renewals. Selected products available under the commercial Passport Advantage Agreement are included under IBM's GSA

Schedule and are hereinafter referred to as "Eligible Products". A listing of these Eligible Products are available at our GSA website.

The Originating U.S. Government customer (defined as an agency or affiliated entity of the U.S. Government) and IBM agree to coordinate the administration of these PA terms within their respective organizations. These PA terms are effective on the date IBM accepts your initial Delivery Order for Eligible Products and remains in effect until the Originating U.S. Government customer or IBM terminates it in accordance with the Section entitled "Termination."

If IBM withdraws an Eligible Product from marketing, the Government will no longer be able to obtain it under this GSA Schedule. 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 Product "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 "Term" is the period that begins on the date IBM accepts the Government's order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

The terms of Passport Advantage, the IBM Program License Agreement “IPLA” (5.8), any applicable attachments, and any associated documents, i.e., Enrollment Form, Proofs of Entitlement and invoice (called "Associated Documents") are the complete agreement regarding transactions, and replace any oral or written communications between us concerning Passport Advantage.

Eligible Products

Eligible Products are for use within the Government’s Site 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. If, as a result of the Government moving an Eligible Product across border, any authority imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Eligible Product), then you agree that the Government is responsible for, and will pay, any such duty, taxes, levy or other fees. This excludes those taxes based on IBM’s net income.

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 authorize use include but are not limited to the number of copies, processors, or users. This PoE, supported by your matching invoice or receipt, is evidence of your level of authorized use. During the term of the Government's Delivery order IBM has the right to verify your compliance with the PA terms on your premises during your normal business hours and for 2 years thereafter, and in a manner that minimizes disruption to your business. IBM may use an independent auditor for this with your prior approval, which you shall not unreasonably withhold. Notwithstanding anything to the contrary

in the Proof of Entitlement document, the terms and conditions of this GSA Schedule apply in lieu of the International Passport Advantage Agreement referenced in the PoE.

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 these terms 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 these PA terms are governed by the license terms stated elsewhere in this SIN entitled, "IBM Program License Agreement (IPLA)". If there is a conflict between the Passport Advantage terms and the IPLA, including the Program's License Information (LI) document, the terms of Passport Advantage stated herein will prevail. Each IBM Program Agreement LI is available at IBM's Web site ibm.com/software/sla.

2. Non-IBM Program License: A Non-IBM Program is governed by the terms of the third party end user license agreement that accompanies it. If there is a conflict between the terms of Passport Advantage and those of the third party end user license agreement, the terms herein 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(see terms elsewhere in this Chapter). 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") if any, with Non-IBM Program licenses under the third parties' terms.

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 the Program's version or release. When Support is withdrawn, the Government 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 the PA terms.

(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 needs on the last day of the month, 12 months from the acquisition date.

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 n it whenever IBM remotely accesses it with your permission.

(vi) IBM does not provide licenses under Passport Advantage for Selected Programs.

IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT USING REASONABLE CARE AND SKILL. THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Annual Renewal of Software Subscription and Support

Software Maintenance and Selected Support is renewable on a subscription basis as a one time charge or a charge for a fixed term depending on the type of license on the yearly Anniversary date. IBM will renew expiring software maintenance for all of the Government's Program licenses to the next Anniversary if IBM receives a delivery order within 7 days after the Anniversary otherwise IBM's systems will automatically terminate the service. If the Government does not renew software subscription and support coverage for certain or all of your Program licenses and at a later date you wish to again obtain coverage for any of those Program licenses, the Government must obtain IBM Software Subscription and Support Reinstatement or Third Party Software Reinstatement, as applicable.

1. Software Subscription and Support or Selected Support obtained or renewed on the Anniversary is renewable for an additional coverage period of 12 full months.

2. 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 months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

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 particular Program, you understand that;

a. IBM will not make software subscription and support Selected Support renewal available for that Program; and

b. 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 withdraw, IBM, at its sole discretion, 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 or credit.

Fixed Term Licensing

As an option, IBM licenses certain Programs for a “Fixed Term”. IBM will specifically designate which Programs Fixed Term applies. “Fixed Term” means that the duration of the license is the limited term so designated by IBM in the Program’s PoE, beginning:

a. on the date that the Government’s order is accepted by IBM

b. on the calendar day following the expiration of a prior Fixed Term; or

c. 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.

Fixed Term Renewal

Expiring Fixed Term licenses will be renewed by IBM provided a delivery order is received within 7 days after the expiration date.

If the Government chooses not to renew the Fixed Term License, you agree to discontinue use of the Program on the expiration date.

If, after the expiration date, the Government chooses to resume use of the Program, you must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

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 pro-rated renewal charge, in order to extend the Fixed Term to the following Anniversary.

Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular Program, the Government understands that:

a. the Government may not renew the Fixed Term License for that Program; and

b. if the Government renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will, at IBM's sole discretions, either (a) continue to use the Program under the Fixed Term licensing terms until the end of the then current Fixed Terms or (b) obtain a prorated refund.

Enterprise

An Enterprise is the US Government Agency or affiliated entity of the US Government Agency.. 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.

Site

"Site" means any location of a U.S. Government Agency issuing to IBM a Delivery Order hereunder for the Agency's own internal use.

The U.S. Government Agency Site issuing a Purchase Order to IBM is defined as the "Originating Site".

Any Site, within the Agency that subsequently enrolls under Passport Advantage is defined as an "Additional Site".

Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage the Government must have already obtained the Program code. IBM's "money-back guarantee" applies the first time you license the IBM Program. If an IBM Program license is for a fixed term that is subject

to renewal, the Government may obtain a refund only if you return the Program and its PoE within the first 30 days of its initial term.

Mutual Responsibilities

Both of us agree that, under these PA terms

A. 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;

B. 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.

C. IBM grants the Government only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

Assignment and Transferability

The Government may not assign these PA terms in whole or in part to any third party outside the US Government, without IBM's prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent.

Eligible Products the Government obtains under these PA terms may not be resold, rented, leased, or transferred to third parties. These licenses may only be transferred within a Site (refer to definition of Site above), unless otherwise agreed to by IBM. The transfer of the license rights and obligations outside of a Site terminates the Licensee's authorization to use the Program under the PoE. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

Termination

IBM may withdraw the Passport Advantage Offering thereby terminating these terms with the Government on three months written notice. If you renewed Software Maintenance for any Programs prior to the notice of termination, IBM at its sole discretion will either continue to provide Software Maintenance to you for those Programs until the end of the then current coverage period or give you a prorated refund or credit.

The Government may terminate Software Maintenance on one month’s written notice. IBM does not give refunds or credits for charges already due or paid.

Either of us may terminate if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms stated herein which by their nature extend beyond its termination remain in effect until fulfilled and apply to respective successors and assignees.

Funding

Notwithstanding anything to the contrary in these terms, the Government's obligation for performance of under these terms is contingent on the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under these terms beyond the end of the

fiscal year until funds are made available to the Contracting Officer for performance and until we receive notice of availability to be confirmed in writing by the Contracting Officer.

5.15.13.1 PASSPORT ADVANTAGE SUB-CAPACITY LICENSING TERMS

The terms herein for Sub-Capacity Terms ("Attachment") are in addition to those of the IBM Program License Agreement (IPLA), as applicable and govern the transaction when you obtain "Eligible Sub-Capacity Products" from IBM on an "Eligible Virtualization Environment."

1. Definitions

Audit Report Period – The period that begins on the first day in a calendar quarter and ends on the last day in the calendar quarter. Alternatively, if your fiscal year is different from the calendar year, you may choose to begin the period on the first day in your fiscal quarter and end on the last day in your fiscal quarter. This period may also be monthly or weekly depending on your requirements.

Audit Reports – A set of reports available in the IBM License Metric Tool ("ILMT"), or by another method acceptable to IBM as specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html, These reports provide the Processor Value Unit ("PVU") license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

Eligible Sub-Capacity Product – A Product for which Sub-Capacity Licensing is available. See listing at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.

Eligible Virtualization Environment – A server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology;

- **Eligible Operating System Technology** – An operating system for which Sub-Capacity Licensing is available. See listing at: http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.
- **Eligible Processor Technology** – A processor technology for which Sub-Capacity Licensing is available. See listing at: http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.
- **Eligible Virtualization Technology** – A virtualization technology for which Sub-Capacity Licensing is available. An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine. See listing at: http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html

Full Capacity – The total number of physical processor cores activated and available for use by the Eligible Sub-Capacity Product(s) on a server.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core(s) – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or

more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit(s) – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at: http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html .

Service Provider – an entity that provides IT Services for end user customers, either directly or through a reseller.

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment. Rules for calculating the Virtualization Capacity for each Eligible Virtualization Environment can be found at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html .

2. Authorizations

a. A Proof of Entitlement (PoE) must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.

b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, you must first acquire additional authorizations, including Software Subscription and Support, if applicable.

c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3. IBM's Responsibilities

IBM will make available and authorize you to use:

a. the ILMT at no charge, when ordered by you. IBM provides the ILMT to you for your compliance with these Sub-Capacity Licensing terms; and

b. the Information Center included with the ILMT to aid your compliance with these Sub-Capacity Licensing terms.

You may make copies of the ILMT and Information Center for your compliance with these Sub-Capacity Licensing terms.

4. Your Responsibilities under Sub-Capacity Licensing Terms

You agree to:

a. install and configure the most current version of ILMT in accordance with the ILMT Information Center, within 90 days of your first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable you to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

1. when ILMT does not yet provide support for the Eligible Virtualization Environment
2. if your Enterprise has fewer than 1,000 employees and contractors, you are not a Service Provider, and you have not contracted with a Service Provider to manage your Eligible Virtualization Environment
3. if the total physical capacity of your Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
4. when your servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, you are required to manually manage and track your Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for your Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html . These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. You will need to subscribe to Tivoli Support notifications via http://www.ibm.com/support/mynotifications in order to be notified when these become available;

c. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less that two years the Audit Reports and make these reports available to IBM upon notice as specified in section 5.11 of this Chapter. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;

d. assign a person in your organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;

e. promptly place an order with IBM or your IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of your authorized level. Software Subscription and Support coverage will be determined to begin at the time you exceeded your authorized level.

5. Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity term.

5.15.14 IBM Software Secure Support via U.S. Citizens

1. Service Description

IBM's Software Secure Support via U.S. Citizens covers IPLA software sold via Passport Advantage, and AIX Operating System programs Software Maintenance support. This offer complements the Government's prerequisite IBM base software support service by providing standard IBM software support exclusively by U.S. citizens who are located in the United States. Your data analysis and call data will be contained in an isolated network within a facility that meets U.S. Government security specifications.

2. Passport Advantage Software Secure Support via US Citizen Terms

IBM Secure 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.

IBM Software Subscription and Support must stay in effect for the IBM Secure Support to be active. While IBM Secure Support is in effect:

- IBM provides U.S. Citizen support via telephone, only to your information systems (IS) technical support personnel during the hours of 8 AM Eastern to 8 PM Eastern, Monday through Friday, but excluding U.S., location, IBM and public holidays. A Service Request will be created and placed in an incoming queue which is managed and handled by a U.S. citizen.
- Service Requests that are submitted electronically through the web will not be secure and IBM cannot guarantee that a U.S. citizen will handle your electronic request. No sensitive data should be sent by the Customer via this electronic service request tool.
- 24x7 software support for business critical outages is available through a customer's standard support entitlement. Secure Support is only guaranteed during the hours of 8 AM to 8 PM Eastern, Monday through Friday, excluding U.S., location, IBM and public holidays.
- If the Secure Support Facility is unable to take a call, the customer has the option of having their call handled by Passport Advantage (non-secure) support until the facility is back online.
- IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions ("Support"). Secure Support for a particular version or release of a Program is available only until IBM withdraws Secure Support for that Program's version or release. The IBM "Software Support Lifecycle" policy is available at http://www-306.ibm.com/software/lotus/support/lifecycle/. When such Secure Support is withdrawn, you must upgrade to a supported version or release in order to continue to receive such support.
- During the support handling process, IBM U.S. citizen support staff may seek assistance from non-U.S. citizens in IBM development, however, customer data will not be released outside of the Secure Support Facility.

- The Duty Manager will be a U.S. citizen who can assist in addressing an escalation that can not be handled by the support staff.
- IBM will verify your Subscription and Support entitlement using its standard processes, such verification does not fall under this Secure Support services.

2.1 Charges

IBM will charge the following uplift to the Passport Advantage product price or Passport Advantage software subscription and support price for this Software Secure Support service:

License & SW Subscription & Subscription Support	2.2%
Annual SW Subscription and Support renewal	11.0%
Annual SW Subscription and Support Reinstatement	11.0%
Trade Up License and SW Subscription and Support	2.2%

By providing IBM with a funded delivery order, the Customer agrees to purchase IBM's Software Secure Support via U.S. Citizens for all current and future licenses for the contract period for the Customer's "Site" as defined by the Passport Advantage terms elsewhere in this Chapter.

Without limiting any other rights or remedies that may be available to IBM, IBM may suspend work in the event payment of any invoice is not paid within thirty (30) days from the Customer's receipt of the invoice.

2.2. Withdrawal of IBM Secure Support via U.S. Citizens

If IBM withdraws IBM Secure Support via U.S. Citizens, you understand that:

a. IBM will provide a minimum of 12 months notice for such a withdrawal;

b. IBM will not renew the next annual IBM Software Secure Support term; and

c. If you renewed IBM Software Secure Support via U.S. Citizens prior to the notice of withdrawal, IBM, at its sole discretion, will either continue to provide secured support to you for Software Product licenses until the end of the then current coverage period or you may obtain a prorated refund.

IBM requires the following Primary Contact information be provided:

Name: _____

Title: _____

Division: _____

Phone: _____

Address: _____

E-mail address: _____

3. Secure Support via USA Citizens Terms for Software Maintenance for AIX Operating System One Time Charge Software

In addition to IBM Software Maintenance for AIX operating system terms, under the section in this Chapter titled "Acquisition of Software Maintenance", the Government may purchase IBM's Secure Support via USA Citizens feature, which provides standard IBM software support managed exclusively by USA Citizen who are located in the continental United States. Secure Support via USA Citizens is available via voice support only. Each time you call IBM, this feature will be turned on only after you identify yourself as a Secure Support via USA Citizens customer and IBM verifies your entitlement for this feature. When required by you, your data analysis and call data will be contained in an isolated network and supported by USA Citizens only.

Pricing for this offer may be found under the Software Maintenance pricelist.

5.16 Software Pricing Options

Note: These pricing options generally apply to "ICA" Programs.

5.16.1 IBM System z Advanced Workload License Charges

Any Programs subject to the terms outlined herein that require z/Architecture (64-bit) hardware in order to execute properly may be licensed only to a Designated Machine that properly implements z/Architecture.

1. Definitions

AWLC - Advanced Workload License Charges available for selected IBM Programs which are used on an Eligible Machine and are running under an Eligible Operating System. AWLC charges allow for Sub-Capacity Pricing.

Eligible Machine - A Machine to which an Eligible Operating System is licensed. Eligible Machines are specified in the IBM System z Advanced Workload License Charges Appendix Q, or later version of IBM's Commercial Exhibit (Z125-8538-00).

Eligible Operating System - An operating system specified in the Exhibit which runs in z/Architecture (64-bit) mode on an Eligible Machine.

Full Capacity MSUs - The total capacity of a Machine as specified in the Exhibit.

Guest (LPAR) - z/TPF or z/OS when running under z/VM.

MSUs - Millions of Service Units per hour; the measure of workload capacity of an Eligible Machine.

Native (LPAR) - z/TPF or z/OS when not running under z/VM.

Operating System Family - An IBM operating system and the IBM middleware that runs under it. The applicable IBM operating systems are z/OS, z/TPF, and z/VSE V4 or higher.

Product LPAR Utilization Capacity - The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which an AWLC IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a four-hour rolling average utilization.

Product Utilization Capacity - The highest number of MSUs utilized concurrently by all copies of an IBM Program running on the same Eligible Machine during a Reporting Period. The number of MSUs is based on a four-hour rolling average program utilization.

PSLC - Parallel Sysplex License Charges are available for selected IBM Programs that are used on an Eligible Machine and are running under an Eligible Operating System. See Appendix L or later version of IBM's Commercial Exhibit – Parallel Sysplex License Charges (Z125-5205-04 or later) for applicable terms.

Reporting Period - The period that begins on the second day of a month and ends on the first day of the following month.

Sub-Capacity Pricing – Charges for AWLC IBM Programs based on less than Full Capacity MSUs.

SCRT – The latest version of the IBM Sub-Capacity Reporting Tool made available by IBM. The SCRT analyzes System Management Facilities ("SMF") data, SCRT89 data, and other data and calculates the Product LPAR Utilization Capacity for AWLC IBM Programs.

Sub-Capacity Report - A report generated by the SCRT to enable IBM to calculate Sub-Capacity Pricing for AWLC Programs. The Government is required to submit the report to IBM only if Sub-Capacity Pricing is in effect.

VWLC - Variable Workload License Charges are available for selected IBM Programs. VWLC charges allow for Sub-Capacity Pricing. See the terms within this Chapter 5 titled, "IBM System z Workload License Charges".

2. Charges

a. The Government has a choice of selecting either, if available, but not both, AWLC or PSLC for all IBM Programs within an Operating System Family on an Eligible Machine. But:

1. if the Government selects AWLC for z/OS on an Eligible Machine, Flat Workload License Charges ("FWLC") apply to all IBM Programs that are announced with FWLC charges:

   (a) FWLC charges are fixed monthly charges.

   (b) FWLC charges are not available on an Eligible Machine unless selects AWLC or VWLC for z/OS on that Eligible Machine;

2. once the Government selects AWLC, the Government may not switch back to PSLC without prior IBM approval, which IBM may grant in its sole discretion;

3. AWLC Programs may not be aggregated for pricing purposes with either PSLC Programs or VWLC Programs; and

4. IBM Programs with charge types specified below, however, may be licensed to the same Eligible Machine as IBM Programs with AWLC charges:

   (a) System z New Application License Charges ("zNALC"), which are described in the terms within this Chapter titled "zNALC License Charges on IBM System z."

(b) New Application License Charges ("NALC"), which are described in the terms within this Chapter titled "System z New Application License Charge ."

(c) Select Application License Charges ("SALC"), which are described in the terms within this Chapter titled "Select Application License Charges for IBM System z Usage Pricing Charges ."

(d) Midrange Workload License Charges ("MWLC"), which are described in the terms within this Chapter titled "IBM System z Midrange Workload License Charges".

b. When AWLC charges apply to IBM Programs:

1. monthly charges are based on the number of MSUs reported for the IBM Program on the Sub-Capacity Report for the specified Eligible Machine during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity. If Sub-Capacity Pricing is not in effect, or the Government does not comply with the terms of this Attachment, monthly charges are based on Full Capacity MSUs.

NOTE: Information on IBM's billing process, including how to determine the applicable Reporting Period for a particular month's charges, can be found on the Sub-Capacity Corner Web site at http://ibm.com/systems/z/swprice/subcap/terms.html;

2. Eligible Operating System licenses are charged at Full Capacity MSUs until IBM has processed the initial Sub-Capacity Report for that Eligible Operating System on that Eligible Machine, thereby initiating Sub-Capacity Pricing for that Operating System Family;

3. the initial monthly charge for a non-operating system license is based upon the applicable MSUs for the Eligible Operating System for that Operating System Family;

4. once Sub-Capacity Pricing has begun for an Eligible Operating System on an Eligible Machine, if an AWLC IBM Program does not appear in a Sub-Capacity Report subsequent to its initial monthly charge, it will be charged at the minimum AWLC MSUs;

NOTE: IBM specifies minimum AWLC MSUs in its programming announcements;

5. if the Government elects to have Sub-Capacity Pricing for an AWLC IBM Program on an Eligible Machine, then the Government must have Sub-Capacity Pricing for all AWLC IBM Programs in that Operating System Family on that Eligible Machine;

6. AWLC Program features have the same MSUs as the Program;

7. increases in any AWLC charges that are due to changes the Government makes in the MSU capacity of any Eligible Machine to which the AWLC IBM Program is licensed will be in effect for a minimum period of one month;

8. if an OS/390 or MVS operating system is licensed to the same Eligible Machine, then charges for the z/OS Operating System Family are based on Full Capacity MSUs; and

9. when z/TPF is licensed to an Eligible Machine, the SCRT calculates the number of MSUs for z/TPF IBM Programs running on it. See Appendix P for Calculation of z/TPF MSUs for further details.

c. When aggregated AWLC charges apply to IBM Programs, aggregated charges:

1. are available only for IBM Programs used on an Eligible Machine in an actively coupled Parallel Sysplex. To be actively coupled, the following criteria must be met:

(a) All Eligible Machines in the Parallel Sysplex must be physically attached via coupling links to a common Coupling Facility. In addition, the Government must provide time synchronization using either timer links to a common Sysplex Timer or coupling links transporting Server Time Protocol ("STP") timing information in an STP Coordinated Timing Network("CTN").

If a Coupling Facility is divided into LPARs, all Eligible Machines must be attached to the same Coupling Facility LPAR.

(b) All Eligible Operating System images that comprise the Parallel Sysplex environment must have at least one common Systems Enablement Function, specified in the Exhibit, activated to use the Coupling Facility across all images in the Parallel Sysplex.

(c) The configuration and operating modes described in this Attachment must be the normal mode of operations for this environment.

(d) An Eligible Machine can only be in one Parallel Sysplex for pricing purposes. The Eligible Operating System images participating in the Systems Enablement Function(s) must account for at least 50 percent of the total Eligible Operating System workload on each Eligible Machine. In the event there are two LPARs, each 50 percent of the total Eligible Operating System workload, connected to two Parallel Sysplexes, The Government may select which Parallel Sysplex the Eligible Machine will be included in for billing.

2. require the Government to provide IBM with a completed IBM Sysplex Verification Package upon the occurrence of any of the following: 1) the Government implements an actively coupled Parallel Sysplex, 2) a change is made to any Eligible Machine, e.g., model upgrades or model downgrade in the Parallel Sysplex, 3) IBM requests a package for any year during which the Government has received aggregated AWLC pricing, and 4) at least once in every 12 month period.

NOTE: The IBM Sysplex Verification Package can be found at http://ibm.com/systems/z/swprice/sysplex/verify.html.

Information regarding the technical aspects of Parallel Sysplex aggregation and detailed information on tools, processes and procedures may be found at the Sysplex Aggregation Web site at http://ibm.com/systems/z/swprice/sysplex.

3. are based on the sum of the MSUs on the Sub-Capacity Reports that the Government submits to IBM for each copy of an IBM Program installed on qualifying Eligible Machines in a Parallel Sysplex;

4. are based on Full Capacity MSUs if Sub-Capacity Pricing is not in effect; and

5. require two or more Eligible Machines actively coupled using the applicable coupling links and Coupling Facility specified in the Exhibit.

d. Transition Charges for Sysplexes:

1. Transition Charges for Sysplexes provide for a reduction in monthly VWLC charges for Programs that qualify for aggregated VWLC charges per the terms in this Chapter titled "System z Workload License Charges".

2. Transition Charges for Sysplexes apply when at least one Machine but not all Machines in an actively coupled Parallel Sysplex is an AWLC Eligible Machine. Transition charging terminates when all Machines in the Parallel Sysplex are Eligible Machines.

3. The reduction in monthly VWLC charges is based on the percentage of the total Full Capacity MSUs of all Machines in an actively coupled Parallel Sysplex that are associated with a Machine eligible for AWLC charges. (See table below). The result of the calculation will be rounded to the nearest whole percent. Fractions of a percent of 0.5 or more are rounded up and fractions of a percent less than 0.5 are rounded down. This calculation excludes capacity related to specialty engines, unassigned capacity, and temporary capacity such as, but not limited to, "Capacity Back Up", "Capacity for Planned Events", and "On/Off CoD".

Percentage of AWLC Eligible Full Capacity MSUs in an Actively Coupled Parallel Sysplex	Reduction in Monthly VWLC
> 0 - 20%	0.5%
21 - 40%	1.5%
41 - 60%	3.0%
61 - 80%	4.0%
81 - < 100%	4.5%

3. IBM's Responsibilities

IBM will:

a. Specify in Appendix Q, or a later version of IBM's Commercial Exhibit (Z125-8538) a) the Eligible Machines and their Full Capacity MSUs, b) the applicable Coupling Facilities, c) Eligible Operating Systems, d) Systems Enablement Functions, and e) the date and the process for transmitting Sub-Capacity Reports to IBM;

b. provide the SCRT;

c. review and validate the Government supplied alternate values indicated in the Sub-Capacity Reports. If appropriate, in IBM's sole discretion, make adjustments to AWLC charges; and

d. register Eligible Machines when the Government submits the initial Sub-Capacity Reports.

4. Government's Responsibilities under Sub-Capacity Pricing

Sub-Capacity Pricing is conditioned upon utilization of capacity approved by IBM and accurate capacity utilization measurement data generated by the operating system and processed by SCRT.

The Government agrees to:

a. promptly install any code required by IBM for IBM Programs or IBM System z Machine Code required by IBM to accurately calculate Sub-Capacity Pricing;

b. not alter, modify, omit, or delete, by any means, directly or indirectly, the:

1. SMF or SCRT89 records;

2. SCRT, except for changes provided by IBM; or

3. Sub-Capacity Reports that the Government submits to IBM, except for those SCRT report fields where the Government comments are expressly required or permitted. Instructions for completion of the required and optional the Government comment fields can be found in the most current version of the SCRT Users Guide (SG24-6522).

c. collect and retain for a period of not less than six months the SMF and SCRT89 data records that are required by SCRT for each Reporting Period from all LPARs on the Eligible Machine. For IBM AWLC Programs that are not reported on SMF 89 records or on SCRT89 records, the Government must use NO89 control statements to identify the LPAR(s) or Guest (LPARs) in which the AWLC Programs ran during any part of the Reporting Period;

d. run the most current version of the SCRT against the collected SMF and SCRT89 data to produce a Sub-Capacity Report from all Eligible Operating System LPARs on the Eligible Machine for which the AWLC Program is licensed. If there have been special circumstances during the Reporting Period, the Government may, in accordance with the then current SCRT Users Guide (SG24-6522), do either of the following: 1) provide alternate values for an AWLC IBM Program that is not reported on SMF 89 or SCRT89 records or 2) use the “Exclude” control statement and provide an explanation of the variance.

e. send to IBM within the time specified in the Exhibit:

1. the initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that the Government wishes IBM to register for Sub-Capacity Pricing; and

2. subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter for each registered Eligible Machine.

Sub-Capacity Reports may not be used to discontinue licenses, report Eligible Machine model downgrades, or to disable IBM Program features.

a. The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A modification may also be required for line items changes, if required by the order agency. The Government is responsible for paying invoices for all monthly charges.

b. Both IBM and the Government agree that Sub-Capacity Reports that reflect a change to Product LPAR Utilization Capacity or to the inventory of IBM Programs on an Eligible Machine (e.g. new Program, or change in Designated Machine previously identified to IBM) will be considered to be orders placed by the Government. Further action may be required by the Government as a result of the billing increases as described in (a) above. Sub-Capacity

Reports not submitted by the "not later than" date specified in the Exhibit will result in IBM Programs being charged on a Full Capacity MSU basis for the Reporting Period;

f. configure the Government's Eligible Machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports the Government submits to IBM are consistent with the Government's actual Eligible Machine configuration. An alternate means for the Government to collect and transmit this data is provided in the SCRT Users Guide (SG24-6522). Failure to submit TSAD may result in IBM Programs being charged on a Full Capacity MSU basis;

g. assign a person in the Government's organization with authority to discuss with IBM and promptly resolve any questions about 1) Sub-Capacity Reports, 2) inconsistencies between the Sub-Capacity Reports and current license entitlement, and 3) configuration data reported via the RSF;

h. contact IBM if the Government elects to convert from AWLC Sub-Capacity Pricing to AWLC at Full Capacity MSUs;

i. not register, directly or indirectly, IBM Programs with the z/OS IFAUSAGE service, except as directed by the documentation for the IBM Program;

j. not register, directly or indirectly, Non-IBM Programs with the z/OS IFAUSAGE service as an IBM Program with an IBM product identifier; and

k. not cause, directly or indirectly, Product Utilization Capacity to be attributed to another program, either an IBM Program or a Non-IBM Program, when the Product Utilization Capacity is unrelated to that program, except in the case of incidental Product Utilization Capacity associated with diagnosing, monitoring or measuring a program.

5. Compliance Verification

Terms are as outlined in the section titled "Compliance Verification" elsewhere in this Chapter.

5.16.2 Extended License Charge (ELC)

Extended License Charges (ELC) are provided for selected System/390 Programs. These charges are based on the total capacity of the machine on which such Programs will be used, as measured in millions of CPU service units (MSU) per hour. Such charges apply to any System/390 or compatible machine with a capacity greater than 80 MSUs. If any System/390 Program has a use-based charge, the Government may elect that charge in lieu of ELC. The MSU rating for the machines are available on http://www.ibm.com/zseries/library/swpriceinfo/

ELC charges are based on a Base Charge for 80 MSU capacity and an incremental per MSU charge for all additional MSUs above the 80 MSU base.

For System/390 Programs running on machines

a. Not listed on the website product list

b. Not listed in a machine group eligible for variable charges, or

c. For which no MSUs have been established,

IBM shall charge the ELC based on twice the highest MSU rating listed for that vendor's product group identified in Product List.

The Government shall be responsible to:

1. Promptly notify IBM of the date of a change in, or alteration to, the machine that affects the capacity of that machine; and

2. Contact IBM to obtain the applicable charge for System/390 Programs that do not have an ELC, but will be designated to a machine listed on the website.

Programs licensed with ELC qualify as a basic license. There are no ELC options available for Distributed Systems License Option (DSLO) licenses or Multiple Operating System (MOSP).

5.16.3 Multiple Operating System - PR/SM Option (MOSP)

IBM's Multiple Operating Systems - PR/SM Option (MOSP) is a graduated software charge option for customers who operate multiple different operating systems on a single machine. The MOSP reduces graduated charges, Basic and DSLO, for System/370™ and System/390™ system and application programs on qualifying machines. The MOSP charge option is an alternative payment option within the same software group level, and as such does not represent a software group level downgrade, or new release or version of software.

IBM provides the charge option for System/370 or System/390 Variable-Charge Programs when the Programs are designated to 1) a Machine with Processor Resource/Systems Manager™ (PR/SM) installed or 2) a non-IBM Machine with a machine partitioning facility similar to PR/SM installed. Qualifying machine type/models are annotated in Appendix G.

The qualifying machine must have an eligible IBM Program from one of the IBM-defined operating system categories normally running concurrently with an eligible Program from a different IBM-defined category. The eligible Programs must have recurring or one-time charges due or paid.

IBM will make certain Variable-Charge Programs available to the Government at the MOSP, and specify a category for eligible operating system Programs. The IBM-defined operating system categories and the IBM operating system programs in each of them are identified in Appendix J.

Should IBM reassign a Program to a different category, Program licenses with MOSP one-time charges due or paid before the reassignment will not be affected. Any reassignments resulting in lower charges shall be effective as of the date of such change. Any one-time charges that are already paid or are due as of the date of such change will receive no credit or refund.

In order to qualify for the alternative MOSP charges the Government must submit to IBM its delivery order and the completed MOSP document in Appendix J, and comply with the following requirements:

1. Notify IBM of the qualifying Machines and eligible Programs via the MOSP document in Appendix J;

2. Eligible Programs must be concurrently on a qualifying Machine; and

3. The Government must promptly notify IBM if PR/SM or other machine partitioning facility is removed from the qualifying Machine or if the Government ends normal concurrent use of the eligible Programs. In such cases, increased charges apply.

Government entities with a non-IBM operating system program normally in concurrent use with another eligible operating system may qualify for MOSP if the non-IBM operating system program is identified in Appendix J.

For delivery orders accepted by IBM, the effective date for MOSP charges shall be the date the delivery order is accepted by IBM.

5.16.4 Programs With Graduated Charges

Notwithstanding any other provisions of this Special Item 132-33, the following apply to those licensed programs having Graduated Charges and only to such licensed programs when licensed with Graduated Charges (one-time or monthly charge).

A. Graduated Charges are based on the Processor Group of the Designated Machine Group on which the licensed program is licensed for use and the Government will pay the applicable charges based on such Group (see Appendix G for iSeries and pSeries products). The program group must be equal to or higher than the processor group identified in Appendix G. If the processor group is 32 and the licensed program groups are 30 and 40, the applicable program charge is that of group 40.

B. If a Program with Graduated Charges is licensed for use on an IBM or Non-IBM Machine not listed below, the Charges will be those for the Group with the highest Charges, or those of an alternative charging methodology, such as Indexed Monthly License Charge, as specified by IBM.

Increases in any System z Program Group charges, due to changes in the Group placement for any Machine that they are licensed to, will be in effect for a minimum period of one month.

Programs are not eligible for Graduated Charges, unless approved by IBM, if:

1. Workload License Charges (WLC) are available for the Program, and

2. The program is licensed to an Eligible Machine listed on the Appendix M for IBM System z Workload License Charges, and

3. z/OS is also licensed to the same Eligible Machine.

Product Information for IBM System z and non-IBM Machines can be found at http://www.ibm.com/zseries/library/swpriceinfo/ (See Machines with Group in the Group column).

C. In addition to specifying the Type and Serial or Plant Order Number of the Designated Machine, the Government's delivery order for each Program with Graduated Charges, or the Government's request for a change in the Designated Machine pursuant to "License Details" terms, will also specify the Model and the applicable Group of such Machine.

D. The Government will immediately notify IBM pursuant to "License Details" herein, any change in the Designated Machine. Such changes may result in a change in the applicable Group.

Any change in the Graduated Charges associated with the new Group will be as described in Paragraph F below and will become effective upon the date IBM receives the Government's request for a change in the Designated Machine.

E. The installation of an upgrade or downgrade to the Designated Machine may result in a change in the applicable Group. In such event, the Government will notify IBM of such change. If such installation is not performed by IBM, the Government will also inform IBM of the date such machine upgrade or downgrade is installed. Any change in Graduated Charges associated with the new Group will be as described in paragraph F below and will become effective when such machine or upgrade is installed.

F. When the Government changes or upgrades the Designated Machine to a machine in a Group with higher charges, the applicable Group Upgrade Charge will be paid by the Government. Prices for processor Group to Group upgrades and Non-MOSP to MOSP upgrades are calculated by taking the delta between the two current GSA prices. When the Government changes or downgrades a Designated Machine to a machine in a Group with lower charges, any Graduated Charges due or previously paid for that higher Group will not be adjusted or refunded.

5.16.5 Growth Opportunity License Charge (GOLC)

Any Programs licensed in accordance with the terms herein that require 64-bit z/Architecture hardware in order to execute properly may be licensed only to a Designated Machine that properly implements z/Architecture.

Growth Opportunity License Charges ("GOLC") are available only for Programs which are used on a Machine listed in "System z Machines " table below. However, GOLC may not be available for all Programs used on a listed Machine. If Graduated Monthly License Charges are available for Programs for which GOLC are not available, then a default charge applies which is equal to the Basic Graduated Monthly License Charge for the Machine Group indicated.

GOLC Category	Default Charge Equal to Basic Charges for:
H30	Group 40
H50	Group 50
H70	Group 70

Increases in any System z Program GOLC or default charges, due to changes in the Category placement for any Machine that they are licensed to, will be in effect for a minimum period of one month. For System z and Amdahl/non-IBM Product Information, see http://www.ibm.com/zseries/library/swpriceinfo/ (See Machines with GOLC in the Group column).

5.16.6 Measured Usage License Charge (MULC) Option

(Withdrawn effective 1/1/99).

Government customers currently under MULC for which there is no S/390 Usage Pricing option, or OS/390 Version 2 is not installed, may continue under the MULC offering beyond 1/1/99. Products installed, including upgrades to a new version, after 1/1/99, cannot be added to MULC. IBM's latest offering is S/390 Usage identified elsewhere in this SIN.

Measured Usage License Charge (MULC) is an alternative software charging offering. MULC is a periodic charge for specific licensed programs running on eligible versions of MVS/ESA. The periodic charges are monthly and the offering is subject to those terms and conditions contained in this contract.

Since the prices of MULC are contingent upon the installation of a software license and the Government's measuring and reporting of program usage, all initial orders for a recurring software license must be placed as monthly license charge. After the license is installed and usage measured as identified in the section entitled Initial Billing Period, below, Government customers paying a monthly periodic charge may convert to MULC. Such licenses will then become subject to the terms and conditions of MULC. Initial orders for Batchpipes/MVS should be placed at a funding level consistent with Tier 6. A subsequent delivery order modification should be made after the initial measurements have been completed and the proper charge established.

No conversions are permitted from Federal License Payment Plan (FLPP) to MULC.

If MULC is selected, all functions of the license must be on the MULC offering.

All MULC licenses carry the entitlements of a Basic License. No DSLO or MOSP pricing options are available.

Measurement Recording

By issuing an order to convert from MLC to MULC, the Government is agreeing:

A. To use, unmodified, the measurement function, provided in the operating system Program, or as a temporary program fix, and

B. To use, unmodified, the reporting function, which is provided in the IBM Usage Software Report Program, provided AS IS, and

C. Not to alter the records collected by the measurement or reporting function.

Determining Measured Usage License Charges

Program usage is measured in machine service units called CPU Service Units (CPU SUs) or gigabytes (GB) (for Batchpipes/MVS). The monthly MULC is determined by applying the CPU SU/GB measurement for a Program to a charge established for a range of measurements identified as a usage band. Usage bands are identified in Appendix K.

When multiple versions of a Program are being used on a machine, the usage band is determined by;

1. Aggregating the CPU SUs/GBs consumed by all the versions eligible for MULC, and

2. Applying the aggregated CPU SU/GB measurement to the charge applicable to the latest version of the Program installed on the machine.

Single Version Charging, as described in Appendix I, and elsewhere in this SIN, does not apply under MULC.

Measurements recorded during IBM's normal test allowance period are disregarded in determining Program usage.

If the Government adds a new version of a Program during a billing period, charges will be based on the charge for the latest version, following any applicable test allowance period.

Initial Billing Period

To convert from MLC to MULC, the Government further agrees to:

A. Activate the measurement function and IBM Usage Software Report Program, and run them for one month (contiguous days) against all copies of an eligible program. This month need not coincide with a calendar month boundary, and

B. Continuously run the measurement function throughout the initial and subsequent billing periods, and

C. Provide IBM with the CPU SU/GB measurements report created by the IBM Usage Software Report Program within 10 business days after the measurements are completed. Measurements are completed twice:

1. Initially at the end of one month as identified above, and
2. Within 10 business days after the end of the initial billing period. This measurement will cover the billing period as described below:
   a. 11/1 thru 9/30 for a program on MULC for the entire prior fiscal year, or
   b. The entire billing period for a program converted after 10/1 of the prior fiscal year; i.e., the measurement report for a program converted 6/1 will cover the period 6/1 through 9/30.

To establish the CPU SU/GB measurement, IBM will:

A. Determine the highest daily usage of the Program, which is the highest of 24 hourly CPU SU/GB measurements recorded each day, and

B. Determine the highest monthly usage of the Program, which, for MULC, is defined as the fourth highest daily CPU SU/GB measurement recorded for the month. This is the measurement used to determine the usage band, and

C. Upon commitment to convert to MULC, evidence of which shall be a written order specifying MULC for the identified Program, including serial number, charges will commence on the first day of the calendar month in which CPU SU/GB measurement and recording is completed.

The initial billing period shall be defined as the period commencing on the conversion date and ending on the last date of the contract period, generally the end of the Government's fiscal year. The initial billing period must commence on or before August 1 of the fiscal year.

When the Government's data collection period begins after August 1, and the customer chooses to convert to MULC, the effective date for conversion will be 10/1 of the subsequent fiscal year, and the usage band will be based on the highest monthly usage on the measurement report.

Renewal Billing Periods

The highest monthly CPU SU/GB measurement for the prior billing period as described above (Initial Billing Period (C)(2)(b) will be the basis for establishing charges for subsequent billing periods.

The Government may end participation in this offering at the end of each fiscal year. If participation is ended (converted to MLC, PSLC IMLC), the Government may not resume participation in this offering for six months. If the Government wishes to convert back to this offering after a minimum of six months, the MULC will be based on the CPU SU/GB measurements report, provided by the Government, for the period from which the Government was last on the MULC offering, up to a maximum period of 12 months. In any event, such conversion back to MULC may not occur after 8/1 of the fiscal year.

IBM reserves the right to convert the charges for the Program to MLC if the Government fails to provide IBM with the CPU SU/GB measurements report within the specified time period.

5.16.7 Parallel Sysplex License Charge (PSLC)

Parallel Sysplex License Charges are available for selected System/390 Programs when these Programs are designated to

A. Parallel Sysplex single machine environment (no coupling required) or;

B. A Parallel Sysplex actively coupled environment - for two or more machines.

Programs licensed with PSLC prices qualify as a basic license; no DSLO pricing is available with PSLC.

However, a basic PSLC license can serve as the basic license upon which other DSLO licenses may operate.

MOSP is not available with PSLC.

The pre-requisite hardware and software products and requirements for being actively coupled, which may qualify a Government user for PSLC pricing are identified on Appendix L.

The PSLC charging option is available as a continuous, monthly charge.

Parallel Sysplex License Charges for machines in a Single Machine Environment (PSLC/E) are available only for Programs which are used on a Machine listed on the website.

If a Program with PSLC/E charges is licensed for use on an IBM Machine not listed below, the charges will be based on twice the highest MSU rating listed.

Increases in any System z Program PSLC/E charges, due to changes in the MSU rating for any Machine that they are licensed to, will be in effect for a minimum period of one month.

You must be operating z/TPF, MVS or OS/390 V1 or z/OS on the Machine.

For Designated Machines running z/TPF: Parallel Sysplex License Charge – Single Machine Environment may apply. However, Programs with WLC may not be licensed to the same Designated Machines.

For all other Designated: Programs are not eligible for Parallel Sysplex License Charges - Single Machine Environment, unless approved by IBM or except as described in Appendix L, if:

1. Workload License Charges (WLC) are available for the Program, and

2. The Program is licensed to an Eligible Machines listed on Appendix M, and

3. z/OS is also licensed to the same Eligible Machine.

For System z and Amdahl and Hitachi Data Systems product information see http://www.ibm.com/zseries/library/swpriceinfo/ (See Machines with PSLC = Yes or PSLC = Single in the PSLC column)

Government responsibilities:

The Government shall promptly notify IBM:

1. When it has an actively coupled Parallel Sysplex environment.

2. If the Parallel Sysplex environment ceases to be actively coupled. In such case, charges will revert to IBM's generally available recurring charges; and

3. If the Government adds or removes machines from the environment. In such cases, the PSLC will be adjusted.

5.16.8 Indexed Monthly License Charge (IMLC)

Indexed monthly license charges are provided for selected System/390 Programs. These charges are based on the total capacity of the machine on which such Programs will be used, as measured in millions of CPU service units (called "MSU") per hour. Such charges apply to any System/390 or compatible machine with a capacity greater than 80 MSUs, not eligible for Parallel Sysplex license charges. If any System/390 Program has a use-based charge, the Government may elect that charge in lieu of IMLC.

Programs licensed with IMLC prices qualify as a basic license; no DSLO pricing is available with IMLC. However, a basic license can serve as the basic license upon which other DSLO licenses may operate.

MOSP is not available with IMLC.

The IMLC charging option is available as a continuous, monthly charge.

For System/390 Programs running on machines (1) not listed in the IMLC exhibit, (2) not listed in a machine group eligible for variable charges, or 3) for which no MSUs have been established, IBM shall charge the IMLC for 200 MSUs.

The Government shall be responsible to:

A. Promptly notify IBM of the date of a change in, or alteration to, the machine that affects the capacity of that machine; and

B. Contact IBM to obtain the applicable charge for System/390 Programs that do not have an IMLC, but will be designated to a machine listed in the IMLC Exhibit.

Programs are not eligible for Indexed Monthly License Charges, unless approved by IBM, if: 1) Workload License Charges (WLC) are available for the Program, and 2) the Program is licensed to an Eligible Machine listed on Appendix M, zSeries Workload License Charges, and 3) z/OS is also licensed to the same Eligible Machine.

The current product information for eligible IBM machines, Hitachi Data Systems, and Amdahl Corporation may be found at http://www.ibm.com/zseries/library/swpriceinfo.

5.16.9 System z New Application License Charge

a. Any Programs licensed in accordance with the terms herein that require 64-bit z/Architecture hardware in order to execute properly may be licensed only to a Designated machine that properly implements z/Architecture.

Eligibility:

To be eligible for New Application License Charges ("NALC Charges"), the Government must have:

1. a machine that is specified at the website below as eligible for NALC Charges and, installed and dedicated to server consolidation of Unix or NT platform print or file server workloads or to
2. one or more of the following qualifying applications specified at the website below ("Qualifying Application(s)")
3. IBM Programs and Features (called "Eligible Programs") specified at the website below as Eligible for NALC Charges:

http://www.ibm.com/zseries/library/swpriceinfo/

The Government agrees to promptly notify IBM at any such time that the machine ceases to be dedicated to server consolidation or to one or more of the Qualifying Applications.

IBM may, from time to time but not more than once in a calendar year ask verification in writing that the Government still meets the eligibility criteria specified above. The Government agrees to promptly provide IBM with such written verification upon request. At any such time that 1) the machine ceases to be dedicated to server consolidation or to one or more of the Qualifying Applications or 2) you fail to promptly provide IBM with the written certification upon request as described above, New Application License Charges will be terminated and the then current monthly license charge will immediately apply.

NOTE: Eligible programs do not qualify as Basic licenses for additional DSLO licenses.

Upgrades and Downgrades:

Upgrades to an eligible processor will result in an increase in the New Application License Charges.

Downgrades to an eligible processor will result in a decrease in the recurring charge.

License Redesignation:

The Government must promptly notify IBM if the eligible Program is redesignated to another machine. New Application License Charges will terminate and then current license charges will immediately apply.

b. zNALC License Charges on IBM System z

1. Definitions

Eligible Machine	A Machine to which an Eligible Operating System is licensed and which is listed on the following website, with "zN" in the zNALC column: http://www.ibm.com/zseries/library/swpriceinfo/. An Eligible Machine is a Designated Machine that is eligible to receive zNALC pricing as described herein.
Eligible Operating System	z/OS (5694-A01) is the only Eligible Operating System
Full Capacity MSUs	The total capacity of an Eligible Machine as specified at http://www.ibm.com/zseries/library/swpriceinfo/.
MSUs	Millions of Service Units per hour. Units of Workload capacity of an Eligible Machine.
Product LPAR Utilization Capacity	The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which z/OS (with zNALC charges) runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.
Reporting Period	The period which begins on the second day of a month and ends on the first day of the following month.
Sub-Capacity Pricing	Charges for z/OS (with zNALC charges) based on less than Full Capacity MSUs.
Sub-Capacity Report	A report generated by the IBM Sub-Capacity Reporting Tool. The tool analyzes System Management Facilities ("SMF") data and calculates the Product LPAR Utilization Capacity for z/OS (with zNALC charges). The Sub-Capacity Report includes this calculation. Customer is required to submit the report to IBM only if Sub-Capacity Pricing is in effect.
zNALC	System z New Application License Charges ("zNALC") charges are available only for z/OS running on an Eligible Machine. zNALC charges allow for Sub-Capacity Pricing and Parallel Sysplex aggregation.
zNALC LPAR(s)	One or more LPARs where z/OS (with zNALC charges) is running.

2. Qualified Applications:

1. An "Application" is a computer program that is used to accomplish specific business tasks (such as Customer Relationship Management ("CRM"), Enterprise Resource Planning ("ERP"), Supply Chain Management ("SCM"), business information warehouse, accounting and inventory control programs), including the database server used for that task. In this definition, an Application is not a standalone database management system or systems management tool (i.e., related to the management or operation of the computer itself or of other computer programs). Examples of software

that are not considered Applications are operating system software, database products (except as qualifying in the section below), transaction managers, tools, utilities and games.

2. An Application may be considered a "Qualified Application" if it is:

   a. currently generally commercially available, supported by its manufacturer and enabled to run under z/OS, and that same Application (with substantially the same functionality) is simultaneously generally commercially available, supported by its manufacturer on, and enabled to run under a UNIX operating system (e.g., AIX, HP-UX, Linux or Solaris), or Microsoft Windows (collectively "Distributed Platforms"); or

   b. a database server running under z/OS and it is operating solely in support of a software program that is currently generally commercially available, supported by its manufacturer and running in a client/server environment where the business logic (e.g., application server) is running on a Distributed Platform; or

   c. Java language business applications running under WebSphere Application Server (or equivalent). These do not include systems management tools.

3. IBM will determine whether a particular software program is a Qualified Application.

   NOTE: For additional information and a few examples of approved zNALC Qualified Applications, see:

   http://ibm.com/zseries/swprice/znalc.html/

3. Requirements for z/OS with zNALC Charges

1. z/OS (with zNALC charges) must be licensed to an Eligible Machine.
2. z/OS IBM middleware running on a zNALC LPAR must be priced with either Workload License Charges ("WLC"), Entry Workload Charges ("EWLC"), or Select Application License Charges ("SALC"), if such charge, as applicable is available.
3. zNALC LPARs must be used exclusively for the Qualified Application and for programs that support the Qualified Application and for no other purpose.
4. z/OS (with zNALC charges) may not be licensed to the same Eligible Machine as either z/OS.e or as z/OS with New Application License Charges ("NALC").
5. z/OS (with zNALC charges) may not be licensed to the same Eligible Machine as OS/390 or MVS.
6. z/OS (with Sub-Capacity zNALC charges) may not run as a guest of any version of VM or z/VM unless:

   a. z/OS APAR OA20314 was applied to the z/OS guest system before it was IPL'd, and

   b. SCRT Version 14.2.0 or higher is used to create the SRCT report.

7. z/OS (with zNALC charges) may not run on any z890 Capacity Setting 110 server or on any z9 BC Capacity Setting A01 server.

8. The first four letters of each zNALC LPAR must be "ZNAL". Alternatively, if Customer prefers not to change LPAR names to qualify for zNALC, and is running z/OS V1.6 or higher, Customer may set the "LICENSE=ZNALC" IPL parameter to indicate a zNALC LPAR,

   NOTE: The zNALC IPL Parameter is available via APAR OA210314.

   Any copies of Eligible Operating Systems that run on an Eligible Machine must run in z/Architecture (64-bit) mode.

9. Customer agrees to certify to IBM:

   a. initially that Customer is eligible for zNALC under the terms prescribed herein for this offering, and

   b. annually that Customer is and has been continuously eligible for zNALC under the terms provided herein.

   zNALC Annual Eligibility Certification Form will be provided to the customer .

   Failure to submit a zNALC Annual Eligibility Certification Form will result in termination of zNALC charges. The z/OS license will revert to then-available charges.

4. Charges

1. When zNALC charges apply to z/OS:

   a. monthly charges are based on the number of MSUs reported for z/OS (with zNALC charges) in the Sub-Capacity Report for the specified Eligible Machine during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity or, on a non-partitioned Eligible Machine, must equal the Full Capacity MSUs. If Sub-Capacity Pricing is not in effect, monthly charges are based on Full Capacity MSUs;

      NOTE: Information on IBM's billing process, including how to determine the applicable Reporting Period for a particular month's charges, can be found on the Sub-Capacity Corner website at http://www.ibm.com/zseries/swprice/subcap/;

   b. z/OS (with zNALC charges) licenses are initially charged at Full Capacity MSUs until IBM has processed the initial Sub-Capacity Report on that Eligible Machine, enabling Sub-Capacity Pricing;

   c. once Sub-Capacity Pricing has commenced for z/OS (with zNALC charges) on an Eligible Machine, if z/OS (with zNALC charges) does not appear in a Sub-Capacity Report subsequent to its initial monthly charge, it will be charged at the minimum zNALC MSUs.

      NOTE: IBM specifies minimum zNALC MSUs in its programming announcements;

   d. eligible features of z/OS (with zNALC charges) have the same MSUs as z/OS (with zNALC charges);

   e. the number of MSUs associated with a zNALC LPAR is equivalent to the highest observed rolling 4-hour average utilization in a Reporting Period. Customer may manage zNALC LPAR utilization by explicitly specifying the defined capacity of the zNALC LPAR(s) on the Hardware Management Console ("HMC"). However, this is

not required to obtain Sub-Capacity Pricing. If Customer chooses to specify the defined capacity for a particular zNALC LPAR, the Sub-Capacity Reporting Tool will use the lower of the specified capacity or the 4-hour rolling average in order to determine the number of MSUs associated with z/OS (with zNALC charges);

f. the capping function in z/OS (with zNALC charges) is used to ensure the workload does not exceed the LPAR defined capacity Customer has specified on a 4-hour rolling average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, Customer authorizes the capping function to cap the computer's resources as defined; and

g. increases in Full-Capacity MSU Charges for z/OS (with zNALC charges), due to changes Customer makes in the MSU capacity for any Eligible Machine that it is licensed to, will be in effect for a minimum period of one month.

2. Calculation of Sub-Capacity MSUs when an Eligible Machine has z/OS licensed with Sub-Capacity charges for both a) zNALC and b) WLC/EWLC:

   If the total MSUs for both z/OS (with zNALC charges) plus the z/OS (with WLC or EWLC charges) shown on the Sub-Capacity Report exceed the highest rolling 4-hour average of the Eligible Machine ("Peak Measurement"), then IBM will reduce the z/OS (with zNALC charges) MSUs so that the total MSUs do not exceed the Peak Measurement. However, the z/OS (with zNALC charges) MSUs will not be reduced below the minimum zNALC MSUs.

   NOTE: IBM specifies minimum zNALC MSUs in its programming announcements.

   NOTE: If an Eligible Machine has z/OS with full-capacity WLC or EWLC charges, then zNALC pricing should be avoided, However, if z/OS with VWLC or EWLC charges is co-resident with z/OS (with zNALC charges), then IBM recommends Sub-Capacity pricing be implemented.

3. When aggregated zNALC charges apply to z/OS, aggregated charges:

   a. are available only for z/OS (with zNALC charges) used on an Eligible Machine in a Parallel Sysplex;

   b. are based on the sum of the MSUs on the Sub-Capacity Reports that Customer submits to IBM for each copy of z/OS (with zNALC charges) installed on qualifying Eligible Machines in a Parallel Sysplex. If Sub-Capacity Pricing is not in effect, aggregated charges are based on Full Capacity MSUs; and

   c. require two or more Eligible Machines actively coupled using the applicable coupling links and Coupling Facility specified in Appendix M sections 3 and 4, or the most current Commercial Exhibit, Z125-7455.

      To be actively coupled, the following criteria must be met:

      i. All Eligible Machines in the Parallel Sysplex must be physically attached via coupling links to a common Coupling Facility. In addition, time synchronization must be provided using either timer links to a common Sysplex Timer or coupling

links transporting Server Time Protocol ("STP") timing information in an STP Coordinated Timing Network ("CTN").

If a Coupling Facility is divided into LPARs, all Eligible Machines must be attached to the same Coupling Facility LPAR.

ii. All Eligible Operating System images that comprise the Parallel Sysplex environment must have at least one common Systems Enablement Function, specified in the Exhibit, activated to use the Coupling Facility across all images in the Parallel Sysplex.

iii. The configuration and operating modes described herein this Attachment must be the normal mode of operations for this environment.

iv. An Eligible Machine can only be in one Parallel Sysplex for pricing purposes. The zNALC Eligible Operating System images participating in the Systems Enablement Function(s) must account for at least 50 percent of the total zNALC Eligible Operating System workload on each Eligible Machine.

In the event there are two LPARs, each 50 percent of the total zNALC Eligible Operating System workload, connected to two Parallel Sysplexes, Customer may select which Parallel Sysplex the Eligible Machine will be included in for billing.

v. On an annual basis, upon IBM's request, Customer will provide IBM with a completed IBM Sysplex Verification Package (Additional information can be found at http://ibm.com/zseries/swprice/sysplex/) for any year during which Customer receives aggregated zNALC pricing.

4. Additional information regarding the technical aspects of Parallel Sysplex aggregation and detailed information on tools, processes and procedures may be found at the Sysplex Aggregation website at the following URL: http://ibm.com/zseries/swprice/sysplex

5. IBM's Responsibilities

IBM will:

1. specify in Appendix M, or a later the current commercial version of Exhibit Z125-7455 the a) Applicable Coupling Facilities, b) Systems Enablement Functions, and c) the date and the process for transmitting Sub-Capacity Reports to IBM;
2. make available the Sub-Capacity Reporting Tool;
3. adjust zNALC charges in response to the changes Customer indicates on the Sub-Capacity Reports that Customer submits; and
4. register Eligible Machines when Customer submits the initial Sub-Capacity Reports.

6. Government Responsibilities under Sub-Capacity Pricing

Government agrees:

1. to promptly install any enabling code for z/OS (with zNALC charges) or IBM System z Licensed Internal Code ("LIC") required for Sub-Capacity Pricing;

2. to collect, and retain for a period of not less than six months, the SMF data records for all LPARs, by Eligible Machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;
3. to run the most current version of the Sub-Capacity Reporting Tool against the collected SMF data to produce a Sub-Capacity Report. If there have been special circumstances during the Reporting Period, Customer may also provide alternate values, as defined in the SCRT Users Guide (SG24-6522), for z/OS (with zNALC charges) with an explanation for the variance;
4. to send to IBM within the time specified in the Exhibit,

a. the initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that Customer wishes IBM to register for Sub-Capacity Pricing; and

b. subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered Eligible Machine;

5. to not use Sub-Capacity Reports to order or discontinue licenses, move licenses between Eligible Machines, report Eligible Machine model upgrades, and enable or disable features for z/OS (with zNALC charges);
6. that Customer considers Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity to be orders placed by Customer without further action on Customer's part, and Customer authorizes IBM to make any resulting billing increase or decrease;
7. that Sub-Capacity Reports not submitted by the "not later than" date specified in the Exhibit will result in z/OS (with zNALC charges) being charged on a Full Capacity MSU basis for the Reporting Period;
8. to configure Customer's Eligible Machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports that Customer submits to IBM are consistent with Customer's actual Eligible Machine configuration. An alternate means for Customer to collect and transmit this data is provided in the "z/OS Planning for Sub-Capacity Pricing" publication. Failure to submit TSAD may result in z/OS (with zNALC charges) being charged on a Full Capacity MSU basis;
9. to assign a person in Customer's organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and
10. to notify IBM if Customer elects to convert from Sub-Capacity Pricing to zNALC at Full Capacity MSUs.
11. The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A Modification may also be required for line item

changes, if required by the ordering agency. The Government is responsible for paying invoices for all monthly usage

Subcapacity Reporting

The Government is responsible for transmitting the Sub-Capacity Reports to IBM per the process outlined in the following website http://ibm/com/zseries/swprice/scrt/. Reports are due by the second, but not later then the ninth, calendar day of each month.

IBM System z Midrange Workload License Charges

Definitions

Eligible Machine	A Machine to which an Eligible Operating System is licensed, and which is listed on the following website, with "M" in the MWLC column: http://www.ibm.com/zseries/library/swpriceinfo/. An Eligible Machine is a Designated Machine that is eligible to receive MWLC pricing as described herein.
Eligible Operating System	An Eligible Operating System for the Midrange product. Current Operating System is z/VSE V4 – 5686-CF8
Full Capacity MSUs	The total capacity of an Eligible Machine..
MSUs	Millions of Service Units per hour. Units of Workload capacity of an Eligible Machine.
Product LPAR Utilization Capacity	The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which a Midrange Workload License Charge ("MWLC") IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.
Reporting Period	The period which begins on the second day of a month and ends on the first day of the following month.
Sub-Capacity Pricing	MWLC IBM Programs based on less than Full Capacity MSUs.
Sub-Capacity Report	A report generated by the IBM Sub-Capacity Reporting Tool ("SCRT") or delivered by IBM to Customer per the section below entitled "Customer Responsibilities under Sub-Capacity Pricing." The tool analyzes SCRT89 records (which are generated by an Eligible Operating System) and customer input. The tool then calculates the Product LPAR Utilization Capacity for MWLC IBM Programs. Customer is required to submit the report to IBM only if Sub-Capacity Pricing is in effect.
MWLC	Midrange Workload License Charges available for selected IBM Programs which are used on an Eligible Machine and are running under an Eligible Operating System, including the Eligible Operating System. MWLC charges allow for Sub-Capacity Pricing.

7. Charges

1. Customer may select MWLC on an Eligible Machine only if an Eligible Operating System is licensed to that Eligible Machine. In addition, any copies of Eligible Operating Systems that run on an Eligible Machine must run in z/Architecture (64-bit) mode.
2. If Customer selects MWLC for any IBM Program on an Eligible Machine, then Customer must select MWLC for all IBM Programs on that Eligible Machine for which MWLC is available.

3. If z/VSE Version 3 or prior is licensed to an Eligible Machine, then MWLC on that Eligible Machine is based on Full Capacity MSUs.
4. When MWLC applies to IBM Programs:
   a. monthly charges are based on the number of MSUs reported in the MWLC IBM Program's Sub-Capacity Report for the specified Eligible Machine during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity or, on a non-partitioned Eligible Machine, must equal the Full Capacity MSUs. If Sub-Capacity Pricing is not in effect, monthly charges are based on Full Capacity MSUs;

      NOTE: Information on IBM's billing process, including how to determine the applicable Reporting Period for a particular month's charges, can be found on the Sub-Capacity Corner website at http://www.ibm.com/zseries/swprice/subcap/;

   b. Eligible Operating System licenses are charged at Full Capacity MSUs until IBM has processed the initial Sub-Capacity Report for that Eligible Operating System on that Eligible Machine, enabling Sub-Capacity Pricing;
   c. the initial monthly charges for an IBM Program (other than the Eligible Operating System) eligible for MWLC charges are based upon the applicable Eligible Operating System MSUs;
   d. once Sub-Capacity Pricing has commenced for an MWLC Eligible Operating System on an Eligible Machine, if an MWLC IBM Program does not appear in a Sub-Capacity Report subsequent to its initial monthly charge, it will be charged at the minimum MWLC MSUs;

      NOTE: IBM specifies minimum MWLC MSUs in its programming announcements;

   e. if Customer selects Sub-Capacity Pricing for any MWLC IBM Program on an Eligible Machine, then Customer must select Sub-Capacity for all MWLC IBM Programs on that Eligible Machine for which Sub-Capacity is available;
   f. MWLC features have the same MSUs as the MWLC IBM Program;
   g. when z/VSE V4 runs as a guest under z/VM V5.1 or lower, it is not eligible for Sub-Capacity Pricing. However, if it runs as a guest under z/VM V5.2 or higher, it may be eligible for Sub-Capacity Pricing;
   h. for Sub-Capacity Pricing the number of MSUs associated with an LPAR (or associated with the MWLC Program itself, if it runs under z/VM V5.2 or higher) is equivalent to the highest observed rolling 4-hour average utilization in a Reporting Period; and
   i. increases in Full-Capacity MSU charges will be in effect for a minimum of one month.

8. IBM's Responsibilities

IBM will:

1. specify
   a. Eligible Operating Systems, and
   b. the date and the process for transmitting Sub-Capacity Reports to IBM (see below);

2. specify all IBM Programs eligible for MWLC charges at http://www.ibm.com/zseries/library/swpriceinfo/. (Click on "Sub-Capacity Monthly License Charge Products");
3. make available the Sub-Capacity Reporting Tool;
4. generate a Sub-Capacity Report from the data sent by Customer in the three attachments described below, and return a Sub-Capacity Report or error report within two business days;
5. adjust MWLC in response to the MSUs on the Sub-Capacity Reports that Customer submits; and
6. register Eligible Machines when Customer submits the initial Sub-Capacity Reports.

9. Customer Responsibilities under Sub-Capacity Pricing

Customer agrees:

1. to promptly install any enabling code for MWLC IBM Programs or IBM System z Licensed Internal Code ("LIC") required for Sub-Capacity Pricing;
2. to run the most current version of the Sub-Capacity Reporting Tool, if SCRT reporting is required;
3. to collect, and retain for a period of not less than six months, the SCRT89 data records for all LPARs, by Eligible Machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;
4. a) if z/OS is available to run SCRT, to run the Sub-Capacity Reporting Tool against the collected SCRT89 data to produce a Sub-Capacity Report;

   b) if z/OS is not available to run SCRT, to submit 1) attachment "(A)" listed below to IBM via File Transfer Protocol ("FTP") and 2) an email to vse@de.ibm.com with attachments "(B)" and "(C)" listed below. The three attachments must be submitted by the fifth day of each month following data collection (e.g., data collected September 2 – October 1 must be submitted on or before October 5th). IBM will return a Sub-Capacity Report (or information on an error situation) within two business days. Customer is then responsible for submitting the SCRT Report per the terms below in this section.

   NOTE: The available FTP servers are specified on http://ibm.com/vse;

   c) if the SCRT becomes available to run natively on z/VSE, Customer must begin using the SCRT for z/VSE within 60 days of general availability.

   The three required attachments are:

   (A) the SCRT89 records for each LPAR in the Eligible Machine. Failure to submit SCRT89 records for all LPARs of the Eligible Machine may result in MWLC IBM Programs being charged on a Full Capacity MSU basis for the Reporting Period;

   (B) the complete set of required SCRT PARMS control statements:

   i. Customer_Name=
   ii. Customer_Number=

iii. Contact_Name=

iv. Contact_email=

v. Contact_Phone=

NOTE: IBM will make available a file containing the standard SCRT PARMS control statements and descriptive comment statements; and

(C) the completed set of NO89 control statements for eligible IBM Programs listed above that do not create SCRT89 records.

NOTE: IBM will make available a file containing standard SCRT NO89 VSE control statements and descriptive comments;

5. to update the Sub-Capacity Report if there have been special circumstances during the Reporting Period. Customer may provide alternate values, as defined in the *SCRT Users Guide* (SG24-6522), for each MWLC IBM Program with an explanation for the variance;
6. to send to IBM within the time specified in the Exhibit:
   a. the initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that Customer wishes IBM to register for Sub-Capacity Pricing; and
   b. subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered Eligible Machine;
7. to not use Sub-Capacity Reports to order or discontinue licenses, move licenses between Eligible Machines, report Eligible Machine model upgrades, or enable or disable MWLC IBM Program features;
8. that Customer considers Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity to be orders placed by Customer without further action on Customer's part, and Customer authorizes IBM to make any resulting billing increase or decrease;
9. that Sub-Capacity Reports not submitted by the "not later than" date specified in the Exhibit will result in MWLC IBM Programs being charged on a Full Capacity MSU basis for the Reporting Period;
10. to configure Customer's Eligible Machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports that Customer submits to IBM are consistent with Customer's actual Eligible Machine configuration. An alternate means for Customer to collect and transmit this data is provided in the "z/OS Planning for Sub-Capacity Pricing" publication. Failure to submit TSAD may result in MWLC IBM Programs being charged on a Full Capacity MSU basis;
11. to assign a person in Customer's organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and
12. to notify IBM if Customer elects to convert from Sub-Capacity Pricing to MWLC at Full Capacity MSUs.

13. The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A Modification may also be required for line item changes, if required by the ordering agency. The Government is responsible for paying invoices for all monthly usage

Subcapacity Reporting

The Government is responsible for transmitting the Sub-Capacity Reports to IBM per the process outlined in the following website http://ibm/com/zseries/swprice/scrt/. Reports are due by the second, but not later than the ninth, calendar day of each month.

5.16.10 IBM System z Usage Pricing Charges

Any Programs licensed in accordance with the terms herein that require 64-bit z/Architecture hardware in order to execute properly may be licensed only to a Designated Machine that properly implements z/Architecture.

The terms of this offering apply to selected IBM System z Programs that have a Usage Pricing Charge, which is a monthly recurring charge. To qualify for Usage Pricing, the eligible program must be running on a Machine or in a qualified Parallel Sysplex (R) where OS/390 Version 2, z/OS or later is running in at least one LPAR partition on the Machine or in the Parallel Sysplex. For each selected Program (Program "Base," where multiple "Bases" of a Program are eligible) the Government may elect a Usage Pricing Charge or any other applicable recurring charge.

Machines or Parallel Sysplexes running OS/390 Auto UNIX do not qualify for S/390 Usage. Pricing Charges as OS/390 Auto UNIX is a pre-configured UNIX-only system without the ability to activate the usage measurement function.

1. Measurement Recording:

Program usage will be measured as specified in the Exhibit (Appendix N) for IBM System z Usage Pricing Charges. To measure and record measurement data, the Government agrees to use, unmodified on all MVS/ESA, OS/390, z/OS and z/OS.e LPARs on the Machine for which the Program is licensed and on all Machines which are actively coupled to that Machine in a Parallel Sysplex, 1) the usage measurement function, which IBM provides in the operating system Program and 2) a reporting function, which IBM provides in the IBM Software Usage Report Program. The Government agrees not to alter 1) the records collected by the usage measurement function; 2) the IBM Software Usage Report Program, except for changes provided by IBM; or 3) the Software Usage reports, generated by the Software Usage Report Program, which the Government will provide to us.

2. Billing Periods

The Government's billing period is the fiscal year. However, IBM will permit the initial billing period to be less to allow for fiscal year alignment.

To establish the usage for a billing period, using the measurement function IBM provides we identify your:

A. Highest daily usage of a Program, which is the highest of 24 hourly measurements recorded each day;

and

B. Monthly usage of Program, which is the fourth highest daily measurement recorded for a month.

The Government agrees to:

A. Run IBM's usage measurement function throughout initial and subsequent billing periods on all MVS/ESA, OS/390, z/OS and z/OS.e LPARs on the Machine for which the Program is licensed and on all Machines coupled to that Machine in a Parallel Sysplex;

B. Reinitialize all copies of DB2 after the usage measurement function has been activated, whenever DB2 usage is being measured for Usage Pricing Charges; and

C. Provide IBM with a Software Usage Report generated by the Software Usage Report Program for (1) each machine not in a Parallel Sysplex, (a separate report for each Machine) and (2) all Machines which are actively coupled in the same Parallel Sysplex (a separate report for all Machines within a Parallel Sysplex, i.e., a separate report for each Parallel Sysplex). The Government must provide these Software Usage Reports within ten business days after the usage measurements are completed one month prior to the end of each billing period.

Initial Billing Period

To establish the measurement for the initial billing period, the Government will run the usage measurement function for two months (contiguous days) against all copies and version of an eligible Program. These months need not be calendar months. The Government must start the measurement period on a day when the eligible Program is running on the Machine and run the usage measurement function on all MVS/ESA and OS/390 LPARs on the Machine or Parallel Sysplex.

The higher monthly usage of the initial two-months determines the Government's monthly Usage Pricing Charge for the fiscal year.

The initial billing period begins on the first day of the first full calendar month in which usage measurement is collected.

Transitioning from MULC

The highest monthly usage, derived from the preceding Measured Usage License Charge (MULC) billing period (including one month before that billing period and excluding the final month of the billing period), will be used to determine the Government's monthly Usage Pricing Charge when transitioning a Program under MULC to Usage Pricing Charges.

Subsequent Billing Periods

The Government agrees to provide the Software Usage Report for the billing period within the first ten business days of the final month of the previous billing period.

The highest monthly usage measured for the initial billing period (excluding those recorded in the final month) will be the basis for establishing charges for the second billing period. For subsequent billing periods, the highest Monthly Usage measured for the prior 12 months, starting one month earlier than the previous billing period, will be the basis for establishing charges.

In the last month of a billing period, IBM will review your usage of a Program and calculate a new Usage Pricing Charge, if appropriate. A new Usage Pricing Charge would apply at the start of the next billing period.

3. Determining the Usage Pricing Charge

The Government's monthly Usage Pricing Charge is determined by the monthly "Usage Level(s)". Usage Levels correspond to the Usage Range(s), specified in Appendix N which are determined by the Government's monthly usage (as reported by the usage measurement function IBM provides)

If the Government is using multiple versions (or copies) of a Program on a Machine, IBM will 1) use the aggregated usage provided on the Software Usage Report to represent the usage consumed by all the version (copies), and 2) apply this aggregate usage measurement to the charge applicable to the latest version of a Program installed on that Machine. At least one version of the Program must be listed on Appendix N as a Program for which Usage Pricing Charges by service units ("SUs") are available.

If the Government is using a Program in an actively coupled Parallel Sysplex environment, IBM will 1) aggregate the usage across all of the Machines in the Parallel Sysplex and 2) apply this aggregate usage to the charge applicable to the latest version of a Program installed on those Machines.

4. General

In determining the Government's usage of a Program, the earlier versions of which are already subject to Usage Pricing Charges, IBM will disregard measurements recorded during an applicable testing period, if any, if you so indicate on the Software Usage Report. If the Government adds a new version of a Program during a billing period, charges will be based on the charge for the latest version.

The charge for a Program will revert to the applicable recurring charge if the Government 1) fails to provide IBM the Software Usage Report within the specified time period or 2) at the end of a billing period, or the end of the Government's participation in this offering. In either event, the Government may not resume participation for that Program. If the Government wants to resume participation, the Usage Pricing Charge will be for 12 months based on the Software Usage Report provided to us for the preceding 12-month period. If a Program was terminated from participating in MULC for either of the above reasons, a 12-month period applies before the Program is eligible for Usage Pricing Charges.

5.16.11 Single-Version Charging

The term "monthly charges" used herein means Monthly License Charges (MLC), Graduated MLC (GMLC), Parallel Sysplex License Charges (PSLC), Growth Opportunity License Charges (GOLC), Annual License Charges (ALC), zSeries Entry License Charges (zELC), Workload License Charges (WLC), and any other month recurring charge.

Single Version Charging (SVC) indicates that monthly, annual or processor group upgrade changes will be waived for a period of 12 months for this predecessor program only while in the process of migrating to the replacement program. When there is no replacement program

specified, if a replacement program becomes available, the predecessor program will then be eligible for SVC. Appendix I contains a listing of qualifying programs.

The waiver will start when charges become due on the replacement program. The replaced program must be operating on the same designated machine where the replacement program is in regular operation. Single Version Charging must be requested by the Government when ordering the new version. Monthly or processor group upgrade charges for a replaced program will commence or become due if the replaced program is operating on a different designated machine from the replacement program, if regular operation of the replacement program is terminated, or upon discontinuance of the replacement program.

Clarifications to SVC under aggregation and changes to SVC when operating under Sub-Capacity are as follows:

1. In the case where a machine is part of a sysplex, if the Government is actively migrating from a program to a designated replacement program on the one machine, all machines upon which the program runs in the sysplex may also have the replacement program licensed. These machines will be deemed as actively migrating for SVC purposes.

2. Licenses where the MSU utilization of the replacement program is less than the MSU utilization of the replaced program qualifies for SVC.

3. When the replaced program and the designated replacement program are eligible for Sub-Capacity pricing, the new MSU valuation for the replacement program is now based on a combination of MSU values. The final replacement program charge is based on the lower of 1) the sum of MSU values for both programs, and 2) a predetermined maximum value. The predetermined maximum values vary based on different configurations:

For versions of z/OS, use the full machines MSU capacity.

For programs other than versions of z/OS:

1. Where z/OS.e is not running on the machine, use the z/OS MSU value,

2. Where z/OS.e is running on the machine, use the sum of the z/OS MSU value and the MSU capacity of the engine(s) where z/OS.e is running.

When Full-Machine Capacity charges apply, charges for the replacement program are based on the MSU value at Full-Machine Capacity. For software programs in a sysplex where aggregation charges apply, the MSU value for each license is calculated as above per machine before totaling to calculate the aggregated MSU value. Standard aggregation rules apply.

The terms and conditions of this Special Item 132-33 remain in effect for the replaced product until the product is discontinued.

Single Version Charging is offered on mainframe software, for migration purposes only, and for a period not to exceed one year. Products in SVC status prior to 10/1/94 may remain in that status indefinitely provided migration activity is being pursued.

5.16.12 IBM System z9 Workload License Charges

Any Programs licensed in accordance with the terms herein that require z/Architecture (64-bit) hardware in order to execute properly may be licensed only to a Designated Machine that properly implements z/Architecture.

Definitions:

Eligible Machine	A Machine to which an Eligible Operating System is licensed. Any copies of Eligible Operating Systems that run on an Eligible Machine must run in z/Architecture (64-bit) mode. Eligible Machines are specified in Appendix M of this Schedule.
Eligible Operating Systems	Operating Systems specified in the Appendix.
Full Capacity MSUs	The total capacity of an Eligible Machine as specified in the Appendix.
Guest (LPAR)	z/TPF or z/OS when running under z/VM
MSUs	Millions of Service Units per hour. Units of Workload capacity of an Eligible Machine.
Native (LPAR)	z/TPF or z/OS when not running under z/VM
Operating System Family	An IBM operating system and the IBM middleware that runs under it. The applicable IBM operating systems are z/OS, z/TPF, and z/VSE V4 or higher.
Product LPAR Utilization Capacity	The highest number of MSUs utilized by the combined logical partitions (LPARs) in which a Variable Workload License Charges (VWLC) IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.
PSLC Option	Parallel Sysplex License Charges available for selected IBM Programs which are used on an Eligible Machine and are running an Eligible Operating System. See Appendix L
Reporting Period	The period which begins on the second day of a month and ends on the first day of the following month.
Sub-Capacity Pricing	WLC for VWLC IBM Programs based on less than Full Capacity MSUs
Sub-Capacity Report	A report generated by the IBM-provided Sub-Capacity Reporting Tool. The tool analyzes System Management Facilities ("SMF") data and SCRT89 data and calculates the Product LPAR Utilization Capacity for most VWLC IBM Programs. The Sub-Capacity Report includes these calculations. The Government is

	required to submit the report to IBM only if Sub-Capacity Pricing is in effect.
WLC	Workload License Charges available for selected IBM Programs which are used on an Eligible Machine and are running under an Eligible Operating System. WLC allow for Sub-Capacity Pricing.

1. Charges

1.The Government has a choice of selecting either, if available, but not both. WLC or PSLC within an Operating System Family on an Eligible Machine that has an Eligible Operating System licensed to it. However,

(a) IBM Programs with charge types shown below, however, may be licensed to the same Eligible Machine as IBM Programs with WLC charges:

i. New Application License Charges (“NALC”)

ii. System z New Application License Charges (“zNALC”)

iii. Select Application License Charges (“SALC”)

iv. Midrange Workload License Charges (“MWLC”)

(b) once the Government selects WLC, the Government may not switch back to PSLC without prior IBM approval, which IBM may grant in its sole discretion; and

(c) WLC Programs and PSLC Programs may not be aggregated together for pricing purposes.

2. When Flat Workload License Charges ("FWLC") apply to IBM Programs, charges are a fixed monthly charge. z/OS must be licensed to the Eligible Machine, FWLC charges are not available on an Eligible Machine if any Program in the z/OS Operating System Family has PSLC charges.

3. When VWLC charges apply to IBM Programs:

a. Monthly charges are based on the number of MSUs reported in the IBM Program's Sub-Capacity Report for the specified Eligible Machine during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity or, on a non-partitioned Eligible Machine, must equal the Full Capacity MSUs. If Sub-Capacity Pricing is not in effect, monthly charges are based on Full Capacity MSUs;

NOTE: Information on IBM’s billing process, including how to determine the applicable Reporting Period for a particular month’s charges, can be found on the Sub-Capacity Corner website at http://www.ibm.com/zseries/swprice/subcap/

b. Eligible Operating System licenses are charged at Full Capacity MSUs until IBM has processed the initial Sub-Capacity Report for that Eligible Operating System on that Eligible Machine, enabling Sub-Capacity Pricing for that Operating System Family.

c. the initial monthly charge for a non-operating system license is based upon the applicable operating system MSUs.

d. once Sub-Capacity Pricing has commenced for an Eligible Operating System on a Eligible Machine, if a VWLC IBM Program does not appear in a Sub-Capacity Report subsequent to its initial monthly charge, it will be charged at the minimum VWLC MSUs;

NOTE: IBM specifies minimum VWLC MSUs in its programming announcements;

e. If the Government elects to have Sub-Capacity Pricing for a VWLC IBM Program on an Eligible Machine, then the Government must have Sub-Capacity for all VWLC IBM Programs in that Operating System Family on that Eligible Machine;

f. VWLC features have the same MSUs as the Program;

g. when z/TPF is licensed to an Eligible Machine, the Sub-Capacity Reporting Tool calculates the number of MSUs for z/TPF IBM Programs running on it. See the Amendment for Calculation of z/TPF MSUs (INTC-7283) for further details;

h. when z/OS is licensed to an Eligible Machine, the Sub-Capacity Reporting Tool calculates the number of MSUs used across all of the z/OS LPARs in which each z/OS VWLC IBM Program ran during the Reporting Period as follows:

If z/OS is running in Native LPAR(s) …	and z/OS is running in Guest LPAR(s), at least one of which is at V1.6 or lower …	and z/OS is running in Guest LPAR(s), at least one of which is at V1.7 or higher …	then, MSUs are calculated in LPAR(s) in which the VWLC IBM Program ran, as follows:
Yes Yes	Yes Yes	Yes No	The highest combined: 1. 4-hour rolling average utilization across all z/OS Native LPARs, and 2. the maximum capacity of all z/OS Guest LPARs
Yes Yes No	No No No	Yes No Yes	The highest combined 4-hour rolling average utilization across all z/OS Native LPARs and z/OS Guest systems
No No	Yes Yes	Yes No	The highest combined maximum capacity of all z/OS Guest LPARs

The Government may manage Native z/OS LPAR utilization by specifying an LPAR defined capacity on the Hardware Management Console ("HMC"). However, this is not required to obtain Sub-Capacity Pricing. If the Government chooses to specify the defined capacity for a particular Native z/OS LPAR, the Sub-Capacity Reporting Tool will use the lower of the specified capacity or the 4-hour rolling average in order to determine the number of MSUs associated with a VWLC IBM Program.

If an OS/390 or MVS operating system is licensed to the same Eligible Machine, then charges for the z/OS Operating System Family are based on Full Capacity MSUs

i. The capping function in z/OS is used to ensure the workload does not exceed the LPAR defined capacity Government has specified on a 4-hour rolling average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, the Government authorizes the capping function to cap the computer's resources as defined; and,.

ii. Increase in any IBM System z Program VWLC charges, due to changes the Government makes in the MSU capacity for any Eligible Machine it is licensed to, will be in effect for a minimum period of one month.

4. When aggregated VWLC apply to IBM Programs, aggregated charges:

a. Are available only for IBM Programs used on an Eligible Machine in a Parallel Sysplex.

b. Are based on the sum of the MSUs on the Sub-Capacity Reports that the Government submits to IBM for each copy of an IBM Program installed on qualifying Eligible Machines in a Parallel Sysplex. If Sub-Capacity Pricing is not in effect, aggregated charges are based on Full Capacity MSUs.

c. Require two or more Eligible Machines actively coupled using the applicable coupling links and Coupling Facility specified in the Appendix.

d. To be actively coupled, the following criteria must be met:

i. All Eligible Machines in the Parallel Sysplex must be physically attached via coupling links to a common Coupling Facility. In addition, time synchronization must be provided using either timer links to a common Sysplex Timer or coupling links transporting Server Time Protocol ("STP") timing information in an STP Coordinated Timing Network ("CTN").

ii. If a Coupling Facility is divided into LPAR's, all Eligible Machines must be attached to the same Coupling Facility LPAR.

iii. All Eligible Operating System images that comprise the Parallel Sysplex environment must have at least one common Systems Enablement Function, specified in the Appendix, activated to use the Coupling Facility across all images in the Parallel Sysplex.

iv. The configuration and operating modes described herein must be the normal mode of operations for this environment.

v. An Eligible Machine can only be in one Parallel Sysplex for pricing purposes. The Eligible Operating System images participating in the Systems Enablement Function(s) must account for at least 50 percent of the total Eligible Operating System workload on each Eligible Machine.

In the event there are two LPARs, each 50 percent of the total Eligible Operating System workload, connected to two Parallel Sysplexes, the Government may select which Parallel Sysplex the Eligible Machine will be included in for billing.

On an annual basis, upon IBM's request, the Government will provide IBM with a completed IBM Sysplex Verification Package

Note: Information can be found at http://ibm.com/zseries/swprice/sysplex/

Additional information regarding the technical aspects of Parallel Sysplex aggregation and detailed information on tools, processes, and procedures may be found at the Sysplex Aggregation website at the following URL: http://ibm.com/zseries/swprice/sysplex/

2. IBM's Responsibilities

IBM will:

1. Specify
   a. The Eligible Machines and their Full Capacity MSUs,
   b. The applicable Coupling Facilities
   c. Eligible Operating Systems
   d. Systems Enablement Functions, and
   e. The date and the process for transmitting Sub-Capacity Reports to IBM;
2. Provide the Sub-Capacity Reporting Tool;
3. Adjust VWLC in response to the changes the Government indicate on the Sub-Capacity Reports you submit; and
4. Register Eligible Machines when the Government submits the initial Sub-Capacity Reports.

3. Government's Responsibilities under Sub-Capacity Pricing

Government agrees to:

1. Promptly install any enabling code for IBM Programs or IBM System z Licensed Internal Code (LIC) required for Sub-Capacity Pricing;
2. Collect, and retain for a period of not less than six months, the SMF and SCRT89 data records for all LPARs, by Eligible Machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;
3. Run the most current version of the Sub-Capacity Reporting Tool against the collected SMF and SCRT98 data to produce a Sub-Capacity Report. In addition, the Government agrees to specify the LPAR name(s) in the Sub-Capacity Report where any IBM Programs run for which SMF or SCRT89 data is not created. If there have been special circumstances during the Reporting Period, the Government may also provide alternate values, as defined in the SCRT Users Guide (SG24-6522), for each IBM Program with an explanation for the variance.
4. Send to IBM within the time specified in the Appendix,
   a. The initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that the Government wishes IBM to register for Sub-Capacity Pricing; and
   b. Subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered Eligible Machine.

Sub-Capacity Reports may not be used to order or discontinue licenses, move licenses between Eligible Machines, report Eligible Machine model upgrades, or enable or disable IBM Program features.

Both IBM and the Government agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity will be considered to be orders placed by you, and you authorize IBM to make any resulting billing increase or decrease. Sub-Capacity Reports not submitted by the "not later than" date specified in the Appendix will result in IBM Programs being charged on a full Capacity MSU basis for the Reporting Period;

The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A Modification may also be required for line item changes, if required by the ordering agency. The Government is responsible for paying invoices for all monthly usage.

5. Configure the Government's Machine to send weekly to IBM Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports submitted to IBM are consistent with the Government's actual Machine configuration. An alternate means for the Government to collect and transmit this data is provided in the "z/OS Planning for Sub-Capacity Pricing" publication. Failure to submit TSAD may result in IBM Programs being charged on a Full Capacity MSU basis;
6. Assign a person in Government's organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and
7. Notify IBM if the Government elects to convert from Sub-Capacity Pricing to WLC at Full Capacity MSUs.
8. The Sub-Capacity Reports must be transmitted to IBM on the second, but not later than the ninth, calendar day of the month. The e-mail address for transmitting the Reports is fednotes@us.ibm.com.

5.16.13 EWLC, TWLC, zELC AND z/OS.e LICENSE CHARGES

The terms and conditions are for Programs running on an Eligible Machine including terms for z/OS.e and Programs with zSeries Entry License Charges ("zELC")), Entry Workload License Charges ("EWLC"), or Tiered Workload License Charges ("TWLC"). When running on an Eligible Machine z/TPF, z/OS or z/OS.e must be running in z/Architecture (64-bit) mode.

1. Definitions

Eligible Machines – A Machine to which an Eligible Operating System is licensed. Any copies of Eligible Operating Systems that run on an Eligible Machine must run z/Architecture (64-bit) mode. Eligible Machines are specified in Appendix O.

Eligible Operating systems – An Operating System specified in Appendix O

Full Capacity – EWLC pricing of Programs based on the total MSUs of the Eligible Machine

Full Logical Model Capacity - The total MSU capacity of the Logical Model.

Guest (LPAR) – An Eligible Operating system when running on z/VM

MSUs - Millions of Service Units per hour. Units of Workload of a z890 or z800.

Native (LPAR) – An Eligible Operating System running on z/VM

Operating System Family – An IBM operating system and the IBM middleware that runs under it. The applicable IBM operating systems are z/OS, z/TPF, and z/VSE V4 or higher.

Product LPAR Utilization Capacity - The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which an EWLC IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.

Reporting Period - The period which begins on the second day of a month and ends on the first day of the following month.

Sub-Capacity - EWLC pricing of Programs based on less than the total MSUs of the Eligible Machine.

Sub-Capacity Report - A report generated by the IBM-provided Sub-Capacity Reporting Tool. The tool analyzes System Management Facilities ("SMF") data and SCRT89 data and calculates the Product LPAR Utilization Capacity for most EWLC IBM Programs. The Sub-Capacity Report includes these calculations. The Government is required to submit the report to IBM only if Sub-Capacity pricing is in effect.

System z9 and zSeries Software ContractsWebsite -
http://www.ibm.com/zseries/library/swpriceinfo/

2. LPAR Limitations – The Government may not use more than 15 LPARs on a zSeries 890 Capacity Setting 110

3. Charges for Program running on an Eligible Machine:

A. Logical Models
For determining the basis for certain software license charges, an Eligible Machine may be divided into two Logical Models, one running z/OS.e and the other running some other operating system(s). If the Eligible Machine is running only z/OS.e or is not running z/OS.e, then there is only one Logical Model and it is equal to the physical Eligible Machine model. (Note: Integrated Facility for Linux ("IFL") engines are not part of Logical Models or the physical Eligible Machine model.)

Logical Models may be calculated as follows

a. If the only charges for Programs on an Eligible Machine are zELC, a table illustrating the various Logical Model combinations may be found in the Appendix.

b. If an Eligible Machine is running a combination of z/OS.e with EWLC charges and some other operating system, the following steps are used to calculate the Logical Model:

    a. The Government advises IBM of planned MSUs:

    Within 30 days of the billing period start date for EWLC charges, the Government will advise IBM of the planned MSUs usage for both z/OS.e and for the non-

z/OS.e Logical Model. The total planned MSUs must equal the total MSU capacity of the Eligible Machine. To determine the total MSU capacity of each model of an Eligible Machine, see the System z9 and Series Software Pricing Website.

b. IBM to calculate Logical Model sizes:

1. IBM will calculate the Logical Model sizes for zELC Programs by selecting the Logical Model with an MSU rating that equals the Government's planned z/OS.e MSU usage, or the next higher Logical Model if you planned z/OS.e MSU usage exceeds the MSU rating for a Logical Model. IBM will similarly calculate the non-z/OS.e Logical Model using non-z/OS.e MSUs.

2. IBM will calculate the appropriate tier for TWLC programs based upon the Government's planned z/OS.e MSU usage. IBM will similarly calculate the non-z/OS.e tier using the non-z/OS.e MSUs.

c. Changing Logical Models sizes:

If an Eligible Machine is upgraded or downgraded, or if the Government changes the MSUs used for z/OS>e, the Government will be advise IBM of the new planned MSUs for both z/OS.e and non-z/OS.e. IBM will adjust the Logical Model accordingly.

d. If MSU usage is greater than the total MSU capacity of the Eligible Machine:

In the event actual MSUs reported on a Sub-Capacity Report for both the z/OS.e and non-z/OS.e Logical Models exceed the total MSU capacity of the Eligible Machine, IBM will reduce the z/OS.e MSUs so that the total MSUs do not exceed the total MSU capacity of the Eligible Machine. However, the z/OS.e MSUs may not be reduced below 3 MSUs. If necessary, the non-z/OS.e MSUs will also be reduced so the total MSU capacity of the Eligible Machine is not exceeded.

This calculation will not impact zELC charges, only EWLC charges.

e. Actual MSU use exceeds planned MSUs provided to IBM:

If the Sub-Capacity Report shows that actual non-z/OS.e MSU usage exceeded the planned MSU usage that the Government provided to IBM, IBM may adjust the size of the Logical Models accordingly. Both IBM and the Government agree that this will result in a billing increase and the Government agrees to pay such revised charges.

The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of an increase in charges exceed such allocated funding. A Modification may also be required for line item changes, if required by the ordering agency. The Government is responsible for paying invoices for all monthly usage.

c. If the charges on an Eligible Machine are either aggregated Variable Workload License Charge ("VWLC") or aggregated Parallel Sysplex License Charges ("PSLC"),

and a Program is running on only one of the Logical Models, the Full Logical Model Capacity for each Logical Model is defined as follows:

a. For a Program running in the Logical Model with z/OS.e:

1. Divide the total number of MSUs in the Eligible Machine by the number of engines in that Eligible Machine;
2. multiply that result by the number of engines in the Logical Model;
3. if the result is not a whole number, any fraction equal to or greater than one-half is rounded up to the next whole number. Otherwise, fractions are dropped.

b. For a Program running in the Logical Model without z/OS.e, subtract the MSUs calculated above from the total MSUs in the Eligible Machine.

B. z/OS.e Charges

z/OS.e charge are based on the number of engines in the Logical Model in which z/OS.e runs or on EWLC charges.

C. Aggregated Charges

a. Aggregated PSLC may apply if the Eligible Machine is coupled in a Parallel Sysplex that has aggregated PSLC charges. Usage Pricing Charges may apply
b. Aggregated Workload License Charges ("WLC") may apply if the Eligible Machine is coupled in a Parallel Sysplex that has aggregated WLC charges.
c. Prerequisite terms within Workload License Charges (WLC) and Parallel Sysplex License Charges (PSLC) Items, and applicable Appendices apply.

D. zELC Charges

a. zELC charges are based on the category of the Logical Model.
b. zELC charges are available for selected Programs used on Eligible Machines that are identified in the "Group" column by "zELC", followed by the zELC category, on the System z9 and zSeries Software Contracts Website.
c. When zELC charges are not available for certain Programs, a default charge applies . It is specified on the System z9 and zSeries Software Contracts Website for each applicable Eligible Machine in the column called “Other”.
d. If the Government selects zELC charges for any Program on an Eligible Machine, then all Programs for which zELC charges are available must have zELC charges, unless EWLC charges are available for selected Programs. In this case those Programs may have EWLC charges.
e. Increases in any zELC or default charges for Programs, due to changes in the category or model placement for any machine to which the Programs are licensed, will be in effect for a minimum of one month

E. TWLC Charges

TWLC charges are a tiered EWLC price structure and based on Full Logical Model Capacity. Sub-Capacity pricing is not available.

a. TWLC charges are available for selected Eligible Programs used on non-aggregated Machines identified in the "Group" column by "TWLC" followed by the TWLC tier on the System z9 and zSeries Software Contracts Website.

b. When TWLC charges are not available for certain programs, a default charge applies. It is specified on the System z9 and zSeries Software Contracts Website for each applicable Eligible Machine in the column call "Other."

c. If the Government selects TWLC charges for any Program on an Eligible Machine, then all Programs for which TWLC charges are available must have TWLC charges, unless EWLC charges are available for selected Programs. In this case those Programs must have EWLC charges. However, if the Government elects Midrange Workload License Charges ("MWLC") on z/VSE V4 then all Programs with MWLC available must have MWLC charges.

d. Increases in any TWLC or default charges for Programs, due to changes in the tier placement for any Eligible Machine to which the Programs are licensed, will be in effect for a minimum of one month.

F. EWLC Charges:

a. EWLC charges are based on Full Capacity or Sub-Capacity pricing.

b. EWLC charges are available only for selected Programs used on non-aggregated Eligible Machines that are identified in the "Group" column by "EWLC" on the System z9 and zSeries Software Contracts Website.

c. If you select EWLC charges for a Program on an Eligible Machine, then all Programs for which EWLC charges are available must have EWLC charges. All other Programs on an Eligible Machine must have zELC charges, if zELC charges are available, or TWLC charges, if TWLC charges are available. However, if the Government elects Midrange Workload License Charges ("MWLC") on z/VSE V4 then all Programs with MWLC available must have MWLC charges.

IBM Programs with Select Application License Charges ("SALC") may be licensed to the same Eligible Machine as IBM Programs with EWLC Charges. SALC is described in the Select Application License Charges terms elsewhere in this Chapter.

d. Full Capacity Pricing Terms: Increases in EWLC charges for Programs, due to changes in the model placement for any Eligible Machine to which the Programs are licensed, will be in effect for a minimum of one month.

e. Sub-Capacity Pricing Terms

(i) Sub-Capacity Charges:

1. New licenses are charged on a Full Capacity MSU's, and non-operating system licenses at the operating system MSUs, until IBM has processed the initial Sub-Capacity Report containing the applicable Program.

2. Monthly charges are based on the number of MSUs reported in the Program's Sub-Capacity Report for the specified Eligible Machine during the Reporting Period. This value corresponds to the Product LPAR Utilization Capacity or must equal Full Capacity. If Sub-Capacity pricing is not in effect, monthly charges are based on the Full Capacity.

NOTE: Information on IBM's billing process, including how to determine the applicable Reporting Period for a particular month's charges, can be found on the Sub-Capacity Corner website at http://www.ibm.com/zseries/swprice/subcap/

Eligible Operating System licenses are charged at Full Capacity MSUs until IBM has processed the initial Sub Capacity Report for that Eligible Operating System on that Machine, enabling Sub-Capacity Pricing for that Operating System Family.

The initial monthly charge for a non-operating system license is based upon the applicable operating system MSUs.

3. Once Sub-Capacity Pricing has commenced for an Eligible Operating System on an Eligible Machine,, if an EWLC Program does not appear in a Sub-Capacity Report subsequent to its initial monthly charges, the Program will be charged at the minimum EWLC MSUs

NOTE: IBM specifies minimum EWLC MSUs in its programming announcements.

4. If the Government elects to have Sub-Capacity Pricing for any EWLC IBM Program on an Eligible Machine, then you must have Sub-Capacity Pricing for all EWLC IBM Programs in that Operating System Family on that Eligible Machine.

5. EWLC features have the same MSUs as the Program

6. When z/TPF is licensed to an Eligible Machine, the Sub-Capacity Reporting Tool calculates the number of MSUs for z/TPF Programs running on it. See the Amendment for Calculation of z/TPF MSUs (INTC-7283) for further details.

7. When z/OS or z/OS.e is licensed to a z890 or z800, the Sub-Capacity Reporting Tool calculates the number of MSUs used across all the z/OS and z/OS.e LPARs in which each EWLC Program ran during the Reporting Period as follows:

If z/OS or z/OS.e is running in Native LPAR(s)	and z/OS or z/OS.e is running in Guest LPAR(s), at least	and z/OS or z/OS.e is running in Guest LPAR(s), at least	then, MSUs are calculated in LPAR(s) in which the EWLC IBM Program ran, as follows:

…	one of which is at V1.6 or lower …	one of which is at V1.7 or higher …	
Yes Yes	Yes Yes	Yes No	The highest combined 3. 4-hour rolling average utilization across all z/OS and z/OS.e Native LPARs, and 4. The maximum capacity of all z/OS and z/OS.e Guest LPARs
Yes Yes No	No No No	Yes No Yes	The highest combined 4-hour rolling average utilization across all z/OS and z/OS.e Native LPARs and z/OS and z/OS.e Guest systems
No No	Yes Yes	Yes No	The highest combined maximum capacity of all z/OS and z/OS.e Guest LPARs

The Government may manage Native z/OS or z/OS.e LPAR utilization by specifying the LPAR defined capacity on the Hardware Management Console ("HMC"). However, this is not required to obtain Sub-Capacity pricing. If the Government chooses to specify the defined capacity for a particular Native z/OS or z/OS.e LPAR, the Sub-Capacity Reporting Tool will use the lower of the specified capacity or the 4-hour rolling average in order to determine the number of MSUs associated with each EWLC Program

If an OS/390 or MVS operating system is licensed to the same Eligible Machines then charges for the z/OS Operating System Family are based on Full Capacity.

8. The capping function in z/OS or z/OS.e is used to ensure the workload does not exceed the LPAR defined capacity you have specified on a 4-hour rolling average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, the Government authorizes the capping function to cap the computer's resources as defined.

(ii) IBM's Responsibilities:

IBM will:

a. Specify in Appendix O a) the Eligible Machine, and b? the date and the process for transmitting Sub-Capacity Reports to IBM;

b. Provide the Sub-Capacity Reporting tool;

c. Adjust EWLC in response to the changes the Government indicates on the Sub-Capacity Reports that the Government submits; and

d. Register Eligible Machines when the Government submits the initial Sub-Capacity Reports.

(iii) Government's Responsibility under Sub-Capacity Pricing:
The Government agrees to:

a. promptly install any enabling code for Programs or IBM System z Licensed Internal Code ("LIC") required for Sub-Capacity pricing

b. Collect, and retain for a period of not less than six months, the SMF and SCRT89 data records all LPARs, by Eligible Machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;

c. Run the most current version of the Sub-Capacity Reporting Tool against the collected SMF and SCRT89 data to produce a Sub-Capacity Report where any IBM Programs run for which SMF or SCRT89 data is not created. If there have been special circumstances during the Reporting Period, the Government may also provide alternate values, as defined in the SCRT Users Guide (SG24-6522), for each Program, with an explanation for the variance;

d. Send to IBM within the time specified in Appendix O

i. The initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that the Government wishes IBM to register for Sub-Capacity pricing; and

ii. Subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered Eligible Machine.

Sub-Capacity Reports may not be used to order or discontinue licenses, move licenses between Eligible Machines, report Eligible Machine model upgrades, or enable or disable Program features.

Both IBM and the Government agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity may result in billing increase or decrease. The Government agrees to pay such revised charges. The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A Modification may also be required for line item changes, if required by the ordering agency. The Government is responsible for paying invoices for all monthly software charges. Sub-Capacity Reports not submitted by the "not later than" date specified in the Appendix will result in Programs being charged on a Full Capacity basis for the Reporting Period;

e. configure your Eligible Machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports you submit to IBM are consistent with your actual Machine configuration. An alternate means for you to collect and transmit this data is provided in the "z/OS Planning for Sub-Capacity Pricing" publication.

Failure to submit TSAD may result in Programs being charged on a Full Capacity basis;

f. assign a person in your organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and

g. notify IBM if the Government elect to convert from Sub-Capacity Pricing to EWLC at Full Logical Model Capacity.

G. GOTC Charges (Graduated One-Time Charges)

(a) Programs for which the Government has paid GOTC may be moved to an Eligible Machine

(b) Upgrade charges will apply if the Eligible Machine “Default Model Group” specified in the Appendix or the zSeries Software Pricing Website is higher than the current GOTC entitlement. Refunds do not apply if the z800 Default Model Group is lower.

(c) Contact IBM for special pricing if the GOTC license is being moved to an Eligible Machine whose applicable default charge is based on MSUs rather than a specific Default Model Group.

4. Additional License Terms for z/OS.e

1. The Government may run z/OS.e only on Eligible Machines.

2. The Government must run z/OS.e in Logical Partition ("LPAR") that has "z/OSE" as the first four characters of the LPAR name.

3. The Government must execute z/OS.e in z/Architecture (64-bit) mode.

4. The Government must order and license z/OS.e for the number of engines in the Logical Model in which you will run z/OS.e, or alternatively, z/OS.e may be ordered with EWLC charges.

5. The Government may use only the levels of Language Environment (LE), JES2 and JES3 that are delivered with z/OS.e.

6. The Government may not run any of the following z/OS.e base elements, optional features, or functions:

a. BookManager READ

b. BookManager BUILD feature

c. GDDM

d. GDDM-PGF feature

e. GDDM-REXX feature

f. DCE Application Support

g. LANRES

h. Bulk Data Transfer (BDT) File-to-File feature

i. Language Environment's use of Run-time Library Services (RTLS)

j. Language Environment Routine Retention (LRR)

k. Language Environment Compatibility Preinitialization for C and PL/I

l. Encina Toolkit Executive

m. MICR/OCR

n. Communications Server Network Print Facility (NPF) feature

7. The Government may not run any of the following under z/OS.e:

a. CICS, IMS, FORTRAN, or COBOL applications. However, you may run precompiled COBOL DB2 stored procedures and other precompiled COBOL applications using the Language Environment pre-initialization interface (CEEPIPI). You may also use DB2, CICS and IMS Connectors to access existing z/OS or OS/390 systems or an application server on Linux for zSeries. Hipersockets may be used as long s they access LPARs or IFLs on the same Eligible Machine.

b. COBOL, FORTRAN, PL/I or Visual Age PL/I compilers. However, you may execute precompiled PL/I and Visual Age PL/I applications.

c. DB2 QMF Host feature, DB2 QMF HPO feature.

d. The Government may not have more than eight concurrent TSO users under z/OS.e.

e. The Government may not run any operating system other than z/OS.e, z/VM V4, z/VM V5 and LINUX in the z/OS.e Logical Model. Such operating systems include, for example, z/OS, OS/390, MVS, VM (prior to z/VM V4), VSE, z/VSE, TPF, z/TPF, etc.

f. The Government agrees to configure your Eligible Machine to send Transmit System Availability Data ("TSAD") to IBM weekly via the Remote Support Facility ("RSF"). This enables IBM to verify that your z/OS.e license matches your actual Eligible Machine configuration. An alternate means for you to collect and transmit this data is provided in the "Hardware Management Console Operations Guide" publication.

5. Programs that run on an IFL

a. Programs that run on an IFL engine may be licensed under the terms of the agreement provided with them.

b. Charges for Programs that IBM has announced as eligible to run on IFL engines are based on the total number of IFL engines installed on an Eligible Machine.

c. If a Program runs on the IFL engine(s) and on the engine(s) of one or both of the Logical Models, the charges are based on the total of the IFL engines and the engines in the Logical Models where the Program runs.

5.16.14 Select Application License Charges for IBM System zUsage Pricing Charges

The terms of Select Application License Charges for IBM System z Usage Pricing Charges ("Amendment") modifies and is made a part of the terms for IBM System z Usage Pricing Charges, and associated Appendices apply to Select Application License Charges ("SALC") terms, except in the case of a conflict, in which case the terms stated herein prevail. In addition, terms in Appendix P also apply to Select Application License Charge software. Any Programs licensed in accordance with the terms of this Amendment may be licensed only to a Designated Machine that properly implements 64-bit z/Architecture.

1. SALC Eligible Programs and Measurements

The following supersedes Appendix N for IBM System z Usage Pricing Charges Programs for which SALC is available are at listed at http://www.ibm.com/zseries/library/swpriceinfo/ Click on "Usage Pricing Charges and Select Application License Charges"

1. SALC requires z/OS. In addition, Workload License Charges ("WLC") or Entry Workload License Charges ("EWLC") must be in effect on the same machine.
2. Usage Levels and ranges for SALC Programs:

Usage Level	Usage Range in MSUs (CPU SUs in millions)
Base 1	1.00
Level A	2.00 - 11.00
Level B	12.00 - 44.00
Level C	45.00 - 78.00
Level D	79.00+

Pricing for usage less than or equal to one MSU requires the Base 1 feature, while usage above one MSU requires the Base 1 feature plus the appropriate number of Level A, B, C and D features. For charging purposes, reported usage is rounded up to the nearest whole MSU.

2. Transitioning from Usage Pricing

The highest monthly usage, derived from the preceding Usage Pricing Charge billing period (including one month before that billing period and excluding the final month of the billing period), will be used to determine your monthly SALC charge when transitioning a Program under Usage Pricing to SALC charges.

5.16.15 IBM System z Programs Sub-Capacity Pricing

These terms modify or are in addition to the IBM Program License Agreement ("IPLA").

Subject to the terms herein for IBM System z Sub-Capacity Pricing ("Amendment"), IBM enables the Government to obtain Sub-Capacity Pricing for certain System z IPLA Programs ("Eligible Programs"). Eligible Programs are specified at http://www.ibm.com/zseries/library/swpriceinfo/. (*Click on " Sub-Capacity zSeries IPLA Programs."*).

These terms supersede any subcapacity terms offered for Eligible Programs in their License Information or other agreements.

If there is a conflict between the terms stated herein and those of the IPLA, these terms will prevail.

Eligible Programs Running in a Workload License Charges ("WLC") Environment

The following sections of these terms, and the terms of System z Workload License Charge (Item 5.16.11 of the GSA IT Schedule) apply to the Eligible Programs, as if they were Variable Workload License Charge ("VWLC") Programs with Sub-Capacity Pricing, and are incorporated by reference into this Amendment with modifications as indicated:

Section 3 - Your Responsibilities under Sub-Capacity Pricing *with the following modification:*

Subsection 4: *The phrase* "you authorize IBM to make any resulting billing increase or decrease" *in the sentence that begins with* "Both IBM and the Government agree that Sub-Capacity Reports..." *is replaced by* "you authorize IBM to make any resulting billing increase."

1. Eligible Programs Running in an Entry Workload License Charges ("EWLC") Environment

The following sections of the terms for EWLC, TWLC, zELC and z/OS.e License Charges (Item 5.16.13 of the GSA IT Schedule) apply to the Eligible Programs, as if they were Entry Workload License Charge ("EWLC") Programs with Sub-Capacity Pricing, and are incorporated by reference into this Amendment with modifications as indicated:

Subsection entitled Government's Responsibility under Sub-Capacity Pricing *with the following modification:,*

Item (iii)(d): *The sentence* "Both IBM and the Government agree" *is replaced by* "You authorize IBM to make any resulting billing increase, and agree to pay such revised charges."

2. Additional Definitions

1. Environment: Standalone machine or Parallel Sysplex

2. Execution-Based Terms:

Execution-Based licensing terms apply to Eligible Programs whose value is based on the capacity of the execution (run-time) Environment. The capacity of an Eligible Program with Execution-Based terms must equal the capacity of the LPAR(s) where it executes.

(a) Reference-Based licensing terms apply to Eligible Programs that add value to particular monthly license charge (MLC) Programs. The capacity of an Eligible Program with Reference-Based terms must equal the capacity of the applicable MLC Program. This MLC Program is called the "Parent Program."

(b) Eligible Programs with Reference-Based terms add value to the Parent Program across the Environment, regardless of where in the Environment the Programs executes.

(c) When an Eligible Program with Reference-Based terms is used in a qualified Parallel Sysplex (described in the WLC or EWLC Attachment), the capacity of the Eligible Program must be equal to the capacity of the Parent Programs across the Parallel Sysplex.

(d) Where there are multiple versions of the Parent Program licensed in the Environment, the IPLA charges will be based on the total billable MSUs of the Parent Programs, but capped at the Parent Programs' z/OS MSU capacity.

3. z/OS-Based Terms:

z/OS-Based licensing terms apply to Eligible Programs that provide value to the particular Machine where the Program is used. The capacity of a Eligible Program with z/OS-Based Terms must equal the capacity of z/OS on that Machine.

3. Qualifications

1. You must have executed WLC or EWLC terms, as applicable.
2. You must agree to keep IBM informed of the type, model, and serial number of each Machine on which each Eligible Program is executing. The scope of your tracking extends to all Machines in your Agency or Department within your Agency, whether the Eligible Programs have Sub-Capacity or Full Capacity charges. If you are unwilling or unable to fulfill your tracking responsibilities, IBM may terminate this contract upon 30 days written notice. In such event Full Capacity terms would apply.
3. If you have Eligible Programs with Execution-Based or z/OS-Based terms, you must have selected Sub-Capacity Pricing for VWLC or EWLC, as appropriate, on the Machine where the Eligible Program is being used.
4. If you have Eligible Programs with Reference-Based terms, you must have selected Sub-Capacity Pricing for VWLC or EWLC, as appropriate, for the Parent Program(s). Full Capacity MSUs will apply for any machine(s) where the Parent Program is not in Sub-Capacity mode.
5. z/OS or z/OS.e must run in z/Architecture (64-bit) mode.
6. OS/390 and MVS may not be licensed to a Machine with Sub-Capacity Pricing.
7. For specific Machine qualifications, see http://ibm.com/zseries/library/swpriceinfo/. See Machines with "WLC" in the WLC column or "EWLC" in the Group column.
8. Monthly Sub-Capacity reports, generated by the Sub-Capacity Reporting Tool ("SCRT"), must be submitted to remain eligible for Sub-Capacity pricing. SCRT terms are described in the WLC and EWLC terms. (NOTE: In the event you are unable to submit your SCRT Report by the ninth calendar day of the month, you must email scrt@us.ibm.com by the ninth calendar day to request an extension.
9. In the event of an unusual situation, you have the opportunity to override the MSU values on the SCRT Report(s) prior to submission. You must provide an explanation for each override.
10. Sub-Capacity terms may not be transferred to third parties.

4. Charges

1. One-time charges are based on the number of MSUs defined in the SCRT Report during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity of the Eligible Programs with Execution-Based or z/OS-Based terms or the Parent Program, as applicable. If Sub-Capacity Pricing is not in effect, one-time charges are based on Full Capacity MSUs or Full Logical Model Capacity, as appropriate.

   NOTE: Information on IBM's billing process, including how to determine the applicable Reporting Period for a particular month's charges, can be found on the Sub-Capacity Corner website at http://www.ibm.com/zseries/swprice/subcap/.

2. For native z/OS LPARs, the number of MSUs associated with an LPAR is equivalent to the highest observed rolling 4-hour average utilization in a Reporting Period. You may manage native z/OS LPAR utilization by explicitly specifying the defined capacity of the LPAR(s) on the Hardware Management Console ("HMC"). This, however, is not required to obtain Sub-Capacity Pricing benefits.

3. If you choose to specify the capacity of the LPAR(s), the SCRT will use the lower of the specified capacity or the 4-hour rolling average utilization in order to determine the Product LPAR Utilization Capacity for each Program.

4. For non-native z/OS LPARs (i.e., z/OS guests of VM), the number of MSUs associated with an LPAR is equivalent to the maximum potential MSU capacity of that LPAR.

5. The capping function in the Eligible Operating System is used to ensure the workload does not exceed the LPAR defined capacity you have specified on a rolling four hour average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, you authorize the capping function to cap the computer's resources as defined.

6. If Sub-Capacity Pricing is not in effect, aggregated charges are based on Full Capacity MSUs or Full Logical Model Capacity, as appropriate.

When any of the above conditions are not met, then the Eligible Program no longer qualifies.

The Government is responsible for monitoring funding allocated on their current Order or Contract and issuing Modifications whenever the result of increases and/or decreases in charges exceed such allocated funding. A Modification may also be required for the line changes, if required by the ordering agency. You authorize IBM to make any resulting billing increase, including S&S, if applicable, and agree to pay invoices for all such charges.

IBM does not give credits or refunds for charges already due or paid if an the applicable Product LPAR Utilization Capacity falls below the then current authorized entitlement.

5. IBM's Responsibilities

1. IBM will provide the following on the SCRT website (http://ibm.com/zseries/swprice/scrt/):

   a. The SCRT, which is at no charge. (NOTE: Written notification of updates will be sent by email)

   b. the e-mail addresses for transmitting SCRT Reports and Notification of Changes to IBM

2. IBM will calculate the applicable MSUs for Eligible Programs with Reference-Based or z/OS-Based terms, by using the MSUs of the Parent Program(s) or z/OS, as applicable, from the SCRT Report(s).

CHAPTER 6 TABLE OF CONTENTS

CHAPTER 6. SPECIAL ITEM 132-50: CLASSROOM TRAINING 1

TERMS AND CONDITIONS 1
6.1 SCOPE 1
6.2 ORDER 1
6.3 TIME OF DELIVERY 1
6.4 CANCELLATION AND RESCHEDULING 1
6.5 FOLLOW-UP SUPPORT 2
6.6 PRICE FOR TRAINING 2
6.7 INVOICES AND PAYMENT 3
6.8 PRICES FOR IBM PRIVATE CLASSES 3
6.8.1 Outside The Continental U.S. (OCONUS) 3
6.8.2 Service Options 4
6.9 ADDITIONAL IBM TERMS 4
6.9.1 Acceptance 4
6.9.2 Customer Dissatisfaction Credit (Money Back Guarantee) 4
6.9.3 Other Government Responsibilities 4
6.9.4 Warranty 5
6.9.5 Warranty For IBM Programs 5

CHAPTER 6. SPECIAL ITEM 132-50: CLASSROOM TRAINING

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information.

6.1 SCOPE

IBM shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.

IBM provides public and private class training courses. For private class training the location will be agreed to by IBM and the ordering activity.

User Training may be delivered in either the traditional classroom setting or via Computer Based Training (CBT). When placing orders for machine readable education materials including CBT training, the terms of SIN 132-33 also apply.

IBM locations are accessible for students with disabilities. If reasonable accommodations are required for an individual with a disability, please advise IBM of the accommodations in advance. IBM does not provide personal attendants, but attendants are welcome to accompany students to class.

6.2 ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the course number, course title, course date and time, student's name, and contracted dollar amount of the course.

6.3 TIME OF DELIVERY

For private classes IBM shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity. IBM will make available its schedule for its public class courses.

6.4 CANCELLATION AND RESCHEDULING

a. For IBM Public Courses, the ordering activity may notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend the course. The Contractor will then permit the ordering activity to either cancel the order or reschedule

the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

Cancellation for Private Class Courses:

The Government may cancel a private class within the following timeframes subject to the following cancellation charges:

1. Cancellation within seven calendar days prior to the scheduled start date a cancellation fee in the amount of the full class price will be billed.
2. Cancellation between eight and fifteen days prior to the scheduled start date, a fee of 25% of the class price will be billed.
3. Cancellation between sixteen and twenty-one calendar days prior to the scheduled start date, a fee of 10% of the class price will be billed.
4. No cancellation fee applies if the private class is cancelled more than twenty-one calendar days prior to the scheduled start date.

In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class. Charges will also be incurred if a class is rescheduled within 21 days from the start of the class. Those charges may be applied at the same rate as the cancellation charges described above.

6.5 Follow-up Support

IBM has service options available to customers who require refresher assistance and answers to related course curriculum questions after attending a class. In addition,, the student may contact the course instructor.

6.6 Price For Training

The price that the ordering activity will be charged will be the price at time of enrollment or the price in effect at the time the course is conducted, whichever is less.

6.7 Invoices And Payment

Invoices for training shall be submitted by the Contractor after the ordering activity completion of the training course. Charges for training is billed in arrears.

Charges for User Training are identified in the Education Price List of this schedule contract., Invoicing for CBT courses are as described for one time charge software in SIN 132-33.

Prices for publicly scheduled classes include the use of required education Materials and machines. They do not include taxes or student travel and living expenses. For private classes, additional charges may be applicable for instructor travel and living expenses, facilities, and remote lab support. It is expected that the customer's computer and terminals will be used to support the lab exercises for a requested private class. The course description indicates whether a class includes machine labs.

6.8 Prices For IBM Private Classes

IBM Private classes are delivered at a customer's location for a class with up to 14 students, (except as noted in the pricelist) with an incremental charge for each additional student. The prices in the Education Pricelist assumes local instructor availability. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under this GSA Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

6.8.1 Outside The Continental U.S. (OCONUS)

For courses delivered outside the continental United States, actual travel expenses of IBM or IBM-authorized education personnel associated with providing instruction shall be billable. Travel expenses shall include, but not be limited to, commercial carrier charges, tolls, meals, lodging and rental cars. In addition privately owned vehicle mileage will be charged at the rate not to exceed $.375 per mile, in accordance with the federal travel regulations or the joint travel regulations, as applicable.

The Government shall have the option to furnish Government transportation, meals and lodging (if applicable) at no charge to IBM. If the Government elects this option, the transportation, meals, lodging and any other support provided by the Government shall be equivalent to the Government per diem, in accordance with the federal travel regulations or the joint travel regulations, as applicable.

6.8.2 Service Options

Two additional service options are provided to handle special circumstances. If the Government is unable to provide their own facilities or lab system, they may purchase these from IBM. For each of these additional service options, IBM will add a charge per day to the cost of the private class for CONUS delivered classes. The charge will be dependent upon the specific requirements.

A. The Government may request IBM supported hands-on lab service, rather than installing the class exercises on their equipment. This service entails the use of the exercises directly on the Education Computing Services (ECS), a lab support system used for IBM's standard public classes.

B. The Government may also request that their private class be held at nearby IBM facilities instead of at their premises.

For OCONUS delivered classes, per-day lab support and/or facility fees will be dependent upon the specific circumstances of the classes provided, and will be quoted upon request.

6.9 Additional IBM Terms

6.9.1 Acceptance

Upon class completion.

6.9.2 Customer Dissatisfaction Credit (Money Back Guarantee)

If a student is not satisfied with an IBM class offered in this Schedule contract, and notifies IBM, in writing, within 30 days of the class completion, IBM will offer an additional class or will refund the price of the class. IBM's Education Customer Service Center (CSC) is the primary contact for customer satisfaction concerns relative to Education. They can be contacted at 1-800-IBM-TEACH.

6.9.3 Other Government Responsibilities

Government agrees not to:

A. Copy IBM's copyrighted material without IBM's prior written consent.

B. Use recording equipment in IBM's classes without IBM's prior written consent.

C. Use trademark, trade name, or other designation in any promotion or publication without IBM's prior written consent.

D. Assign, or otherwise transfer your rights under this Contract without IBM's prior written consent.

E. Neither the Government or IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

6.9.4 WARRANTY

THERE ARE NO EXPRESS WARRANTIES EXCEPT THOSE CONTAINED HEREIN OR IN ANY APPLICABLE LICENSE AGREEMENT. THERE ARE NO IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO WARRANTY AS TO RESULTS TO BE ATTAINED BY ATTENDING OUR CLASSES OR USING OUR EDUCATION MATERIALS.

6.9.5 WARRANTY FOR IBM PROGRAMS

Refer to the Warranty information in SIN 132-33.

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CHAPTER 7 TABLE OF CONTENTS

CHAPTER 7. SPECIAL ITEM 132-51: INFORMATION TECHNOLOGY PROFESSIONAL SERVICES 1

TERMS AND CONDITIONS 1
7.1 SCOPE 1
7.2 PERFORMANCE INCENTIVES 2
7.3 ORDER 2
7.4 PERFORMANCE OF SERVICES 2
7.5 STOP WORK ORDER (FAR 52.242-15)(AUG 1989) 3
7.6 INSPECTION OF SERVICES 4
7.7 RESPONSIBILITIES OF THE CONTRACTOR 4
7.8 RESPONSIBILITIES OF THE ORDERING ACTIVITY 4
7.9 INDEPENDENT CONTRACTOR 4
7.10 ORGANIZATIONAL CONFLICTS OF INTEREST 4
7.11 INVOICING 5
7.12 PAYMENT 5
7.13 RESUME 6
7.14 INCIDENTAL SUPPORT COSTS 6
7.15 APPROVAL OF SUBCONTRACTS 6
ADDITIONAL TERMS FOR IBM SERVICES 6
7.16 STATEMENT OF WORK 6
7.17 ORDERS FOR SUPPORT SERVICES AND OPERATIONAL SUPPORT SERVICES 7
7.18 REQUIRED CONSENTS 7
7.19 CONTROL AND SUPERVISION 7
7.20 PERSONNEL 7
7.21 CUSTOMER RESOURCES 8
7.22 ACCEPTANCE 8
7.23 WARRANTY FOR IBM SERVICES 8
7.24 MATERIALS OWNERSHIP AND LICENSE 9
7.25 OFFERINGS 10
7.25.1 Technical And Consulting Services 10
7.25.2 Travel Reimbursement And Other Charges 11
7.25.3 Technical And Consulting Services Project Termination 11
7.26 PERFORMANCE BASED SERVICES 11
7.27 MOVEMENT OF EQUIPMENT (REINSTALLATION, DISCONTINUANCE, REARRANGEMENT) 12
7.28 SUPPORT SERVICES 14
7.28.1 zSeries Software Services 14
7.28.1.1 Alert 14
7.28.1.2 Resolve 14
7.28.1.3 SoftwareXcel enterprise edition for zSeries 15
7.28.1.4 SoftwareXcel basic edition for zSeries 17
7.28.2 pSeries Software Services 19
7.28.3 iSeries Software Services 21
7.29 OPERATIONAL SUPPORT SERVICES 22
7.29.1 Support Line 23

7.29.2 IBM Software Support Services – account advocate.....27

CHAPTER 7. SPECIAL ITEM 132-51: INFORMATION TECHNOLOGY PROFESSIONAL SERVICES

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM IT Professional Services that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472) the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item will be available to the Government within the United States, the District of Columbia and Puerto Rico. Such sales will be made to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform Services to overseas U.S. Government locations which are in support of national defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

7.1 SCOPE

a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.

b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

GSA has negotiated hourly service rates but ordering activities are responsible for any necessary statement of work, the reasonableness of the number of hours and the reasonableness of the labor mix between labor categories.

IBM provides the Government with several IT Support options under this SIN. Services include Technical and Consulting Services and Software Support; and IT professional rates may be found in Appendix C. The various offerings are identified below, and charges are outlined in Appendix D.

IBM is not responsible for failure to fulfill its obligations under this Special Item due to causes beyond its control.

The Government agrees that all of the terms and conditions of this Special Item applicable to restricted materials shall be applicable to materials, regardless of form, labeled "Restricted Materials of IBM" when distributed to the Government.

7.2 Performance Incentives

A. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.

B. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.

C. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

7.3 Order

A. Agencies may use written orders, Electronic Data Interchange (EDI) orders, funded blanket purchase agreements (BPA's), individual purchase orders, credit cards or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation-May 2003), Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

B. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence, except as may be otherwise agreed to by both IBM and the user agency with GSA's concurrence.

For Performance Based Services notwithstanding any other provisions in this contract including but not limited to paragraphs **7.3.(B) and 1.24,** in the event of conflict between the unique terms, conditions and prices of each negotiated engagement and the GSA/IT Schedule terms, the Performance Based Service's task order shall govern.

Whenever the Government requires that service to be provided at a domestic location by persons with security clearances, the Government shall state that requirement in each order issued. IBM may, at its option, reject any such orders by written notice to the ordering office within 60 days of receipt. If a DD Form 254, DOD Contract Security Classification Specification is required for security purposes, Section 6.a of the DD Form 254 should show the same IBM address as on the delivery order for maintenance coverage.

7.4 Performance Of Services

A. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

B. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by IBM and the ordering activity.

C. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

D. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulations or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all contractor travel.

7.5 Stop Work Order (FAR 52.242-15)(Aug 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

7.6 Inspection Of Services

The Inspection of Services - Fixed Price (AUG 1996) (Deviation-May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. Since the IBM services performed under this contract are commercial items, they will be performed in accordance with IBM's standard warranty provision and acceptance criteria. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

7.7 Responsibilities of the Contractor

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

7.8 Responsibilities Of The Ordering Activity

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

7.9 Independent Contractor

All IT Services performed by the Contractor or its subcontractors under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Government.

7.10 Organizational Conflicts Of Interest

A. Definitions

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract, without some restriction on activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

B. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the Government, ordering offices may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and

shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

7.11 INVOICING

The Contractor, upon completion of the work ordered, shall submit invoices for ITservices. Progress payments may be authorized by the ordering activity, if appropriate, on individual orders. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

In the event that a price increase occurs from the date of issuance of a delivery order (for a new service) to the date of receipt, the price shall be that which is indicated in IBM's quote or that which is agreed to in a statement of work (SOW), provided that the order is received within the timeframe specified. In the absence of an IBM quote or SOW, then the price shall be that which is in effect on the date of receipt by IBM.

7.12 PAYMENT

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (Feb 2007) (ALTERNATE I – Feb 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (Feb 2007) (ALTERNATE I – Feb 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

IBM professional service rates, as specified in Appendix C shall apply to (b)(1), (2), and (3) above.

7.13 Resume

Resumes shall be provided to the GSA Contracting Officer or the user agency upon request.

7.14 Incidental Support Costs

Incidental support costs are available outside the scope of this contract, and will be considered a non-schedule item for purposes of including the costs on the delivery order. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

7.15 Approval Of Subcontracts

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order. Such written consent shall be provided to IBM with the issuance of the order to perform the service.

Additional Terms for IBM Services

7.16 Statement Of Work

A separate Statement of Work will be signed by both IBM and the Government for services provided other than hourly assist services. Upon acceptance by IBM, IBM agrees to provide the Services described in the Statement of Work.

The Statement of Work includes, for example:

A. IBM's responsibilities

B. The Government's responsibilities

C. The specific conditions (Completion Criteria), if any, that IBM is required to meet to fulfill its obligations

D. A performance period for Services and an estimated schedule for planning purposes, and

E. Applicable charges (not including taxes) and any other terms.

F. Resumes shall be provided by IBM upon request.

If a Statement of Work contains an estimated schedule, both IBM and the Government agree to make reasonable efforts to carry out our respective responsibilities according to that Schedule. If the Statement of Work contains Completion Criteria, IBM will inform the Government when each criteria is met. The Government then has 10 days to inform IBM if the Government believes that IBM has not met the criteria. The project is complete when IBM meets the Completion Criteria.

Changes to Statements of Work

When both IBM and the Government agree to change a Statement of Work, IBM will prepare a written description of the agreed change which must be signed by both IBM and the Government. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, additional charges may be required for analysis of the changes. Additional work will not commence until funded authorization is received from the Government.

7.17 Orders For Support Services And Operational Support Services

The Government's order shall contain a description of the specific service being requested.

7.18 Required Consents

The Government is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in a Statement of Work. A Required Consent means any consents or approvals required to give IBM or our subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and our subcontractors to perform the Services set forth in the Statement of Work without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such product. IBM will be relieved of the performance of any obligations that may be affected by your failure to promptly provide any Required Consents to IBM.

7.19 Control And Supervision

IBM and the Government is each responsible for the supervision, direction, control, and compensation of their respective personnel.

The tasks on which assigned personnel assist shall remain the responsibility of the Government. Therefore, IBM does not guarantee that the Government's task will be accomplished under this contract, only that assistance shall be provided. No estimate made by IBM of the assistance to be provided to the Government is guaranteed to any extent or in any way.

7.20 Personnel

In recognition of the fact that assigned personnel to the Government under this contract may perform similar services from time to time for others, this contract shall not prevent IBM from performing such similar services or restrict IBM from using the personnel provided to the Government under this contract. IBM reserves the sole right to determine the assignment of its employees.

Work schedules may be set forth in the Government's order. IBM will attempt to provide personnel in accordance with such schedules subject to circumstances beyond IBM's control.

Should such personnel be unable to perform scheduled services under this contract because of illness, resignation, or other causes beyond IBM's reasonable control, IBM will attempt to replace such personnel within a reasonable time, but IBM shall not be liable for failure to replace such personnel within the schedule. All schedules may be revised by mutual agreement.

IT Professional Services may be performed by both IBM personnel and subcontracted non-IBM personnel. IBM will provide IT Professional Service personnel with the necessary technical skills.

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

7.21 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

7.22 ACCEPTANCE

A. For items having Completion Criteria (in the statement of work), when IBM meets the Completion Criteria.

B. For hourly service, upon completion of the service hours.

7.23 WARRANTY FOR IBM SERVICES

For each IBM Service, IBM warrants that it will be performed:

A. using reasonable care and skill; and

B. according to a mutually agreeable Statement of Work or its current description, including any completion criteria.

Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies is place of these Machine warranties.

The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs (IBM Programs licensed under a separate IBM license agreement, e.g., IBM International Program Licensing Agreement) and Non-IBM Programs (Programs licensed under a separate third party License agreement) may be found in their license agreements.

7.24 Materials Ownership And License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or

enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this item.

Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either IBM or the Government, or jointly, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either the Government or IBM.

7.25 Offerings

7.25.1 Technical And Consulting Services

For detailed skill descriptions and rates see Appendix C

Services which may be provided under this Special Item Number include, but are not limited to:

Conversion Support

Database Planning and Design

Data Records Management

Information Technology Consulting

Implementation Support

Network/Communications

Programming

Project Management

Resources and Facilities Management

Systems Analyst/Design

Systems Engineering

Systems Installation

Security

Image System

Independent Validation and Verification

Software Testing

System Testing

Training

7.25.2 Travel Reimbursement And Other Charges

Contractor travel will be in accordance with the Federal Travel Regulation or Joint Travel Regulations, as applicable. Established Federal Government per diem rates will apply.

The Government agrees to pay charges for these services including Billable Travel Time, if applicable, described hereafter in accordance with the rates set forth below. A one-hour minimum charge applies.

Costs for transportation and per diem (lodging, meals and incidental expense) are directly reimbursable by the ordering agency. Not-to-Exceed (NTE) amounts will be negotiated with the agency prior to the acceptance of each delivery order as appropriate. Travel time, as defined below, is billable at the same hourly rates as set forth in the Services price list.

Billable Travel Time is travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. Travel time will be calculated as the lesser of the actual travel time incurred, or the normal travel time from/to the nearest IBM Location to/from the Government's location, or the normal travel time from/to the individual's assigned IBM location.

In the event the Government requires a specific technical skill which is not available from the normal servicing IBM Location, Billable Travel Time means the actual travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. In such event, the Government will be notified in advance and its authorization obtained when such billable travel time is to be incurred.

In addition to the charges laid out herein, there may be charges applicable to this contract for special or unusual expenses incurred by IBM which are necessary to perform these services. If applicable, these charges will be set out separately in the Government's order.

7.25.3 Technical And Consulting Services Project Termination

Either party (IBM or the Government) may terminate a project on written notice if the other party does not meet its obligations concerning the Statement of Work. Upon termination, IBM will stop work in an orderly manner as soon as practical.

The Government agrees to pay IBM for all Services provided and any Products and Materials delivered through the project's termination and any charges IBM incurs in terminating subcontracts, if any. The provisions of the Government's rights to Terminate for Convenience shall be in accordance with FAR 52.249-2.

7.26 Performance Based Services

Performance Based Services include a wide variety of tailored services and may include service level objectives. Examples of such IT Solutions are: Web Hosting Services, Colocation Services, Seat Management Services and Managed Storage/Storage on Demand Services. These Performance Based Services may include elements in other SINs of GSA's IT Schedule. Offers are made in response to a SOW issued in accordance with the IT Professional Services ordering

procedures as set forth in SIN 132-51 entitled "Ordering Procedures," and may include unique terms, conditions and prices. As opportunities are identified, each offering will be established with the Agency based on their unique requirements.

7.27 Movement Of Equipment (Reinstallation, Discontinuance, Rearrangement)

IBM offers a wide range of services including Rearrangement, Discontinuance, and Reinstallation services under this GSA Schedule. In addition, IBM will customize the offering to meet the Government's needs and may include other services such as cabling (bus and tag and/or fiber) or provide movers.

The Government shall notify IBM in writing at least 30 days prior to the rearrangement of equipment at the same installation site or movement to another location. Maintenance charges will be interrupted only for relocation of equipment, not for rearrangement within the same installation, and shall cease at the end of the day stated in the Government's notice. Maintenance charges shall be reinstated on the day following the first day the equipment is in place and in good operating condition at the new location.

IBM provides Movement of Equipment Services within the 48 contiguous states and the District of Columbia. On a case-by-case basis IBM may provide these services outside of these designated locations.

IBM's Responsibilities:

Discontinuance Services: IBM will prepare the Government's Machines, and identify the items normally shipped with them, for shipment in accordance with IBM's standard practice. IBM will identify and place appropriate service manuals, diagnostics, licensed internal code, and other items in shipping containers (provided by IBM). If requested, IBM will perform additional activities such as the retrieval and packing of cables (including channel interface cables or other cables the Government specifies), as well as other items which the Government may request, for shipment in containers which the Government supplies or which IBM may supply if requested. These additional activities and packing material will be priced separately and the terms and conditions included in the Statement of Work.

Rearrangement Services: IBM will disassemble and reassemble Machines in accordance with our standard practice for rearrangement of Machines within the same room. Cables, terminators, and other items will be repositioned as required. Such a move does not include complete discontinuance and reinstallation services. IBM will identify the items which are normally moved with the Machine. IBM will test the Machines to conform with their Specifications after reinstallation, including active IBM features.

Reinstallation Services: IBM will reassemble the Machines, including the removal of any internal packing materials and the interconnection of required IBM cables to support the reinstallation activities. Interconnection is defined as the attachment of cables that are in place and labeled to the Machine(s) being reinstalled. Cabling also includes the connection of all inter-frame cables. If requested, IBM will perform additional cabling activities such as the reinstallation of interface cables and network cables for an additional fee. IBM will test the

Machines to conform to their Specifications, including active IBM features, and install or reconfigure the Machine diagnostics.

Government Responsibilities:

The Government is responsible to do the following:

A. Inform each designated Location(s) of the work to be done and the estimated schedule for such Location;

B. Provide the information and requirement necessary for IBM to perform the Services in a timely manner;

C. Ensure the Machines are functional and conform to their Specifications, including active IBM features prior to the start of the Services;

D. Make back-up copies of any relevant program and data;

E. Provide appropriate security clearances for IBM personnel; and

F. Obtain all approvals, as necessary, for access to the building.

The Government must notify IBM if non-IBM personnel will be used to lay, remove, connect, or disconnect the interconnecting cables between the Machines. Any repair, delays or other costs resulting from such non-IBM activity will be an additional charge to the Government.

The Government is responsible for charges for repairs to:

A. Correct Machine malfunctions, unless such repairs are covered by an existing IBM agreement;

B. Correct the results of repair or reconfiguration work done by others;

C. Correct the results of warehouse damage or visible transit damage occurring while the Machines are not under IBM's control; and

D. Replace missing parts or parts IBM did not furnish for the Machine that require replacement.

Damage:

IBM will be responsible for physical damage to the machines during disassembly and/or reassembly of the machines only while the machines are under the control of IBM or IBM-selected independent contractors. The Government is responsible for reporting physical loss or damage to the Machines. IBM must receive such notification in writing within 10 working days after the service is performed. IBM's responsibility for damage as stated above is contingent upon IBM's receipt of such notice. In no event will IBM be liable for damage caused during shipment, including invisible transit damage.

Prices:

Prices for Reinstallation, Discontinuance and Rearrangement services are based on rates listed in Appendix C of this schedule. Other charges associated with the service per the agency's unique requirements will be priced separately, these may include: packing material, movers, rigging, physical planning, cabling, replacement value coverage.

A Project Manager will be required for services that include movers, rigging or other coordination activities. The charge for a Project Manager will be based on the rates identified in Appendix C of this Schedule.

Orders:

Delivery orders for these services must include:

A. Type/serials of all machines which Machine Movement Services are requested,

B. Relevant addresses,

C. Identification of the type of service required

D. A requested time frame in which the service is to be performed,

E. The Government's designated point of contact: name and telephone number.

7.28 Support Services

Charges for these Services are found in Appendix D.

7.28.1 zSeries Software Services

7.28.1.1 Alert

IBM provides the following for selected zSeries Products:

A. Automatic electronic notification of High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and any Program Temporary Fixes ("PTFs") we discover to be defective (called "PE PTFs")

B. Information regarding the installation of new releases of Products or installation of preventive service packages;

C. Access to Product cross-reference information;

D. The ability to order PTFs and request their electronic or physical delivery; and

E. The ability to order preventive service packages.

7.28.1.2 Resolve

Provides electronic Services to assist the Government in identifying and resolving problems. IBM will provide:

A. Tracking of Authorized Program Analysis Reports (called "APARs") and Program Temporary Fixes (called "PTFs");

B. The ability to electronically report code-related problems to the IBM support center and receive an electronic response;

C. Access to Product cross-reference information;

D. Access to information on the maintenance of Products and diagnostic information on non-IBM problems;

E. Access to Program technical information data bases, including a questions and answer library;

F. The ability to order PTF's electronically and request electronic or physical delivery;

G. The ability to report a suspected hardware problem to IBM electronically; and

H. Information regarding the installation of products or installation of PTFs.

Resolve is charged on a per USERID basis as specified in Appendix D of the pricelist. USERIDs are assigned on an individual basis and are not to be shared.

7.28.1.3 SOFTWAREXCEL ENTERPRISE EDITION FOR ZSERIES

Provides the Government the following package of services:

1. Remote Assistance with the operation of supported Programs within specific product groups running under designated operating systems.
2. Alert which provides electronic notification of and information about potential problems with selected IBM products.
3. Resolve which provides electronic services to assist the Government in identifying and resolving problems with the operation of its eligible System/390 Machines and eligible Programs installed on them.
4. Monthly Status Reports

The following definitions and terms apply to Remote Assistance:

Full Shift means 24 hours a day, seven days a week, including national holidays.

Off Shift means all hours outside Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. In the local time zone where you receive the assistance, Monday through Friday (excluding national holidays).

Disaster Recovery Machines – are those machines used to maintain business continuity, which are not part of your production, test or development machines.

Supported Products means those products contained within designated product groups that run under identified operating systems for the zSeries hardware platform. Supported Products are identified in the Supported Products List located at IBM's internet address http://www.ibm.com/services/sl/products, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, and operating system groups for the zSeries hardware platform that are eligible for this assistance. The Supported Products List will change periodically to reflect Supported Product additions or deletions, (for example, deleting products at their end of currency date). IBM may withdraw support for products on the Supported Products List at any time without written notice to you.

IBM's Responsibilities:

IBM provides the Government remote assistance (via an electronic search and questioning capability, at no additional charge) for the following requests related to Supported Products:

1. Basic, short duration installation, usage, and configuration questions;**
2. Code-related problem questions;***
3. Questions regarding IBM Supported Product publications,**
4. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems);** and
5. For known defects, available corrective service information and program fixes which the Government is entitled to receive under the Program Services terms identified in this contract,***

**Note: For an additional charge, the Government may receive this assistance via telephone from IBM's support center.

***This assistance is also available via telephone from IBM's support center. Telephone assistance is included in the Government's Program license charge.

In addition, IBM provides the Government the capability to have IBM and the Government concurrently view the Government's code-related problem data.

Multi-Site Discount:

The Government may be eligible to receive a multi-site discount. Qualification of this discount is based on the number of sites the procuring agency is paying for and where Government personnel are interfacing with IBM for the SoftwareXcel service.

Response Criteria:

IBM will use commercially reasonable efforts to provide a response to each of the Government's requests as follows:

A. For other than code-related problems,

   1. Within two hours of electronic receipt during Prime Shift and if received during Off-Shift, within two hours of the start of Prime Shift on the next business day (IBM is not responsible for delays in response delivery caused by systems and network problems), and
   2. If the Government orders the telephone support upgrade, within two hours of telephone receipt during Prime Shift and for Full Shift telephone coverage, within two hours of telephone receipt during the Off-Shift for those requests that the Government specifies to be Customer Critical Problems and within four hours of telephone receipt during Off-Shift for all other requests (Customer Critical Problem means a problem for which you have no known work around resulting in a critical disruption in your business operations); and

B. For code-related problems, within one hour of electronic or telephone receipt during available support hours when premium response is requested. Available support hours within the contiguous United States and Puerto Rico are during Prime Shift. Available support hours within Alaska and Hawaii are during the hours of 11 a.m. to 8 p.m., Eastern Time, Monday through Friday (excluding national holidays).

IBM's initial response may result in resolution of the Government's request or it will form the basis for determining what additional actions may be required to achieve technical resolution of the request.

Government's Responsibilities:

A. Ensure the Government has properly licensed all Programs for which assistance is requested;

B. Retrieve and review a current Supported Products List to verify whether there have been any additions or deletions of products within the specified product groups;

C. Meet the prerequisites IBM specifies for electronic access to IBMLink;

D. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to problems the Government requests assistance with; and

E. Provide IBM will appropriate remote access to the Government's system to assist in isolating and determining the problem cause. The Government will remain responsible for adequately protecting the system and all data contained therein whenever IBM remotely accesses it with the Government's permission.

Charges for SoftwareXcel enterprise edition for zSeries are based on the largest processor and each additional processor, at each of the Government's supported locations, with installed Programs for which the Government has ordered this Service. All processors at your supported locations must be covered under this Service.

In addition to your responsibilities you also agree to the following:

a. The Government must provide IBM with written notice of changes to their processor inventory within one-month after change occurs; this includes any machine adds, removals, physical location changes or Disaster Recovery Machine designation. Such changes may cause revision to charges for this Service; and

b. Should there be a price increase as a result of an inventory change, it is the Government's responsibility to promptly submit a modification to your existing delivery order to authorize funding for the changes in inventory per IBM's new price quote.

If IBM detects inventory changes at your Specified Locations, during IBM's normal customer inventory validation processes, IBM will provide the Government with a new quote to add or remove the machine(s) and update your service based on the date the machine(s) were installed or removed from productive use. It is the Government's responsibility to promptly submit a modification to your existing delivery order to authorize funding for the changes in inventory.

7.28.1.4 SOFTWAREXCEL BASIC EDITION FOR ZSERIES

A. Remote assistance questions regarding the operation of supported Programs within specific product groups running under the designated operating systems.

The following definitions apply for this assistance:

Off Shift means all hours outside Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the assistance, Monday though Friday (excluding national holidays).

Supported Products means those products contained within designated product groups that run under identified operating systems for the zSeries hardware platform. Supported Products are identified in the Supported Products List located at IBM's Internet address http://www.ibm.com/services/sl/products, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, and operating system groups for the zSeries hardware platform that are eligible for this assistance. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date). IBM may withdraw support for products on the Supported Products List at any time without written notice to the Government.

IBM Responsibilities

IBM will provide the Government with remote assistance (via an electronic search and questioning capability) for the following requests related to supported products:

1. Basic, short duration installation, usage, and configuration questions;
2. Code-related problems and questions; ***
3. Questions regarding IBM Supported Product publications;
4. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
5. For known defects, available corrective service information and program fixes which the government is entitled to receive in the Program Services terms of this Schedule.***

*** Note: this assistance is also available via telephone from IBM's support center. Such telephone assistance is included in the Government's Program License charge.

IBM will provide the Government with unique user Id's authorized for this Service.

Response Criteria

IBM will use commercially reasonable efforts to provide a response to each of the Government's requests for other than code-related problems, within two hours of electronic receipt during Prime Shift and if received during Off-Shift, within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

IBM's initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of the Government's request.

Government Responsibilities

The Government agrees to:

1. Ensure the Government is properly licensed to all Programs for which the Government requests assistance;

2. Retrieve and review a current Supported Products List on a regular basis to verify whether there have been any additions or deletions of products within your product groups;
3. Meet the prerequisites IBM specifies for electronic access to IBMLink;
4. Ensure that only the end user authorized for a particular user ID uses the user ID; and
5. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to problems the Government requests.

B. Resolve, which provides with electronic Services to assist you in identifying and resolving problems with the operation of Eligible System/390/zSeries Machines and eligible Programs installed on them.

7.28.2 pSeries Software Services

Alert for pSeries

Alert for pSeries provides automatic daily notification for selected IBM Products of 1) High Impact and Pervasive Authorized Program Analysis Reports (call "HIPER APARS"), 2) any Program Temporary Fixes IBM discovers to be defective (called "PE PTFs), 3) latest available fixes, and 4) security advisories. IBM provides notification via e-mail for up to three different addresses of your choice.

IBM Responsibilities

IBM will provide you Alert notifications regarding each of your specified pSeries systems based on the parameters you choose when setting up this Service. If you implement IBM Service Agent, IBM will tailor the maintenance information that it provides to you for your specific environment.

Your Responsibilities

If you do not currently have an IBM Registration ID, you agree to obtain one at https://www.ibm.com/account/profile/us?page=reg. The IBM Registration ID must be used to 1) access the Alert Web site, 2) set up your preferences for Alert notifications, and 3) indicate which type of notifications you choose to receive.

IBM eServer pSeries performance management

Performance Management provides the Government with Web-based access to utilization and performance data for your designated eServer pSeries or IBM RS/6000 systems.

IBM will:

1. Receive and store your system data for those time periods you have specified for each covered system;
2. Prepare performance and utilization charts and reports based on the data received;
3. Develop and maintain a Web site where users you authorize may view your system performance and utilization charts and reports;

4. Maintain your system data including charts and reports for the length of time documented at the Web site; and
5. Provide general instructions and information (called 'Level 1 Support') via telephone from our support center in response to the Government's telephone requests regarding:
    a. Data collection from the Government's system;
    b. Transmission of data to IBM;
    c. Access to the Web site including entitlement and registration for users authorized by you; and
    d. Interpretation of your system performance and utilization charts and reports.

IBM will provide such Level 1 Support during Prime Shift only, which means our standard business hours in the local time zone where the Government receives the Service (for example, 8 am to 5 pm) Monday through Friday, excluding holidays.

The Government agrees to:

1. Satisfy the hardware and software system requirements, specified by IBM, prior to start of this service. This includes ordering (at no additional charge to you), installing, and activating IBM Electronic Service Agent for IBM pSeries and IBM RS/6000 Servers which enables collection of data from the Government's designated system and transmission of that data to IBM. IBM provides this IBM Electronic Service Agent software subject to the terms of the agreement provided with it;
2. Modify the Government's data collection procedures to enable the capture of data for the Service;
3. Provide adequate disk space for temporary and static files for both client and server systems;
4. Manage registration and entitlement for those users the Government authorizes to access the Web site; and
5. Provide a modem and dial-up communication line that can be used to transmit the collected data to IBM.

Charges for this Service are based on the number of licenses of the AIX operating system supported under this Service. The Government is also responsible for any communication charges it may incur as part of this Service.

System and workload resource utilization and performance information used to prepare the Government's reports is gathered using client code. The collected data is stored daily on each client after which it is collected by the Service Agent for AIX client to process for transmission to IBM. Once the data is received by IBM, it will be analyzed to produce your reports.

Access to the pSeries performance management Web site requires an IBM Registration ID. If you do not have an IBM Registration ID, one can be obtained at https://www.ibm.com/account/profile/us?page=reg.

The information gathered from the Government's IBM pSeries or IBM RS/6000 server will be used to generate the Government's Service reports. In addition, the Government agrees that IBM may use and share the data so collected ("Your Data") within the IBM Enterprise and with third

parties such as subcontractors and consultants under contract to IBM without limitation, including for purposes of problem determination, assisting the Government with performance and capacity planning, maintaining existing and developing new business relationships with IBM, notifying the Government of existing or projected resource constraints, and assisting IBM to enhance IBM Products. The Government also agrees that Your Data may be transferred to such entities in any country whether or not a member of the European Union.

The Government may authorize IBM to share Your Data with other third parties, including one or more Solution Providers and Business Partners to make them aware of the Government's performance and capacity demands and to enable them to provide the Government with a higher level of service.

IBM Software Maintenance for AIX Operating Systems

Terms and conditions for this offering may be found in Chapter 5, SIN 132-33 Perpetual Software License

7.28.3 iSeries Software Services

Alert

Alert provides automatic weekly notification for selected IBM Products of 1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and 2) any Program Temporary Fixes we discover to be defective (called "PE PTFs"). IBM provides notification via the Government's choice of available delivery methods.

IBM Responsibilities

IBM will provide you Alert notifications regarding each of your specified iSeries systems based on the parameters you choose when setting up this Service. If you implement IBM Service Agent, IBM will tailor the maintenance information that it provides to you for your specific environment.

Your Responsibilities

If you do not currently have an IBM Registration ID, you agree to obtain one at https://www.ibm.com/account/profile/us?page=reg. The IBM Registration ID must be used to 1) access the Alert Web site, 2) set up your preferences for Alert notifications, and 3) indicate which type of notifications you choose to receive.

PM/iSeries

Provides utilization and performance data for the OS/400 systems the Government has designated.

IBM Responsibilities

IBM will provide the Government with a set of performance analysis reports regarding each of the specified OS/400 systems for the time period the Government has defined (for example, 8 a.m. to 5 p.m.) for the calendar period selected (for example, monthly or quarterly). If an electronic delivery method is selected by the Government, IBM's reporting calendar period will be monthly.

Your Responsibilities

The Government agrees to activate, per IBM's instructions, the PM/400 data collection software that is part of the Government's OS/400 operating system. The Government must also set up a modem and dial-up communication line that can be used to transmit the collected data to IBM.

Access to the performance management (PM iSeries) Web site requires an IBM Registration ID. If you do not have an IBM Registration ID, one can be obtained at https://www.ibm.com/account/profile/us?page=reg.

The Government has the option to have the reports generated from the data, delivered via hardcopy mail or electronically.

The Government is responsible for any communication charges you incur associated with the Service.

Data Collection

Systems utilization and performance information used to prepare reports is gathered from the Government's AS/400 system by the performance monitoring function of OS/400. For details on exactly what information is gathered by the performance monitoring function, please refer to the OS/400 Work Management manual that is shipped with the system.

Data Usage

The information gathered from the AS/400 systems will be used to generate PM/iSeries Service reports. In addition, the Government agrees that IBM may use and share the data so collected ("Your Data") within the IBM Enterprise and with third parties such as subcontractors and consultants under contract to IBM without limitation, including for purposes of problem determination, assisting the Government with performance and capacity planning, maintaining existing and developing new business relationships with IBM, notifying the Government of existing or projected resource constraints, and assisting IBM to enhance IBM Products. The Government also agrees that "Your Data" may be transferred to such entities in any country whether or not a member of the European Union.

The Government may authorize IBM to share "Your Data" with other third parties, including one or more Solution Providers and Business Partners to make them aware of the Government's performance and capacity demands and to enable them to provide the Government with a higher level of service.

IBM Software Maintenance for eServer

Terms and conditions for this offering may be found in Chapter 5, SIN 132-33 Perpetual Software License.

7.29 Operational Support Services

Charges for these Services are found in Appendix D.

Definitions

Customer Critical Problem: A problem for which the Government has no known work around resulting in a critical disruption in business operations.

Full Shift: 24 hours a day, seven days a week, including national holidays.

Off Shift: All hours outside of Prime Shift.

Prime Shift: 8 am to 5 pm in the local time zone where service is received, Monday through Friday (excluding holidays).

Enterprise: Is the Department or Agency under contract for Enterprise Support Services.

Supported Products - products and system environments. The Supported Product list is located on IBM's Internet address http://www.ibm.com.services/sl/products, or as otherwise provided by IBM. The Supported Product List will identify the products and system environments within specified support groups that are eligible for this Service. The Supported Product List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

Delivery Orders will only be accepted for products up to and including the product's currency end date. Should products be withdrawn during the fiscal year in which a delivery order has already been received by IBM, the Product will continue to be supported until the end of the fiscal year. Renewal orders will not be accepted once a product has been withdrawn, or has reached its end of currency date.

7.29.1 Support Line

Service Description

Support Line offers the Government remote assistance with operation of supported products and system environments. In addition, the Government may order certain optional features which are enhancements to this Service. These terms also apply for each of these optional features unless IBM specifies otherwise.

Definitions

Customer Critical Problem means a problem for which you have no known work around resulting in a critical disruption in your business operations.

Full Shift means 24 hours a day, seven days a week, including national holidays.

Off Shift means all hours outside of Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

Supported Products means those products and system environments identified in the Supported Products List for your support groups located at IBM's Internet address http://www.ibm.com/services/sl/products, or as otherwise provided by IBM. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

IBM's Responsibilities

IBM will provide the Government remote assistance (via telephone from our support center or via an electronic search and questioning capability) in response to the Government's requests pertaining to the following:

For all Supported Products in the Government's covered support groups:

1. Basic, short duration installation, usage and configuration questions;
2. Questions regarding IBM Supported Product publications

For all IBM Software Supported Products in the Government's covered support groups:

1. Code-related problem questions;
2. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
3. For known defects, available corrective service information and program fixes which the Government is entitled to receive under the terms of the IBM license.

When the Government reports a problem with covered non-IBM products on the Supported Product List, IBM will assist in isolating the problem cause and providing recovery information, if available, from the vendor. IBM will provide corrective service information and program fixes, if available and which IBM has the authorization to provide, for known defects. If a new (unknown) defect is identified, IBM will report it to the appropriate vendor and notify the Government of the action taken. At this point IBM will consider its support requirement fulfilled. Resolution of these problems is the responsibility of the vendor.

For the Linux support groups, IBM may make available new fixes to the Red Hat and SUSE Enterprise releases of the Linux operating system open source components for IBM supported Linux distributions. IBM may make available emergency source code fixes as new defects are reported. IBM is not a Linux distributor and does not distribute patches, maintenance updates or refreshes. You must receive maintenance updates and refreshes directly from the Linux distributor under the terms of their license. IBM will make these new source code fixes available to the Linux distributor and the open source maintainer for inclusion and distribution as errata updates and patches. IBM will support and maintain these new source code fixes until such time that the Linux distributor or open source maintainer incorporates them or develops an alternate fix and distributes as errata update or patch. At such point IBM will consider its support requirement fulfilled.

Using the Service

Response Criteria

If not initially answered by a Service technician, IBM will use commercially reasonable efforts to respond, by telephone, to Support Line Service calls from the Government within two hours during Prime Shift. IBM's initial response may result in resolution of the request or it will form the basis for determining that additional actions may be required to achieve technical resolution of the request. If you select Full Shift coverage or Hourly Out-of-Scope support, during Off Shift IBM will use commercially reasonable efforts to respond to Service calls which the Government specifies to be Customer Critical Problems within two hours and all other Service calls within four hours.

Electronic Support

The Government will also be able to electronically submit Support Line Service requests for Supported Products, provided the Government has Internet access. IBM will use commercially reasonable efforts to respond to each electronic Service request from the Government within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, IBM will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

Government's Responsibilities

The Government agrees to:

1. Ensure all software Supported Products for which assistance is requested are properly licensed and have a current subscription (where required) for the Supported products for which you request assistance;
2. Retrieve and review a current Supported Product List on a regular basis to verify additions or deletions within the Government's covered support groups;
3. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems the Government requests assistance with;
4. If necessary, provide IBM with appropriate remote access to the Government's system to assist in isolating the software problem cause. The Government will remain responsible for adequately protecting the system and all data contained therein whenever IBM remotely accesses it with the Government's permission.
5. Provide IBM with written notice, within one-month, when making any changes to the Government's machine inventory that would affect this Service. Such changes may cause a revision to your charges for this service.(Note: This responsibility does not apply for Enterprise Support);
6. Designate a technically qualified representative (called 'Primary Technical Contact") who will be the Government's focal point to whom we may direct general technical information pertaining to the Government's Supported Products. The Primary Technical Contact and each caller must have sufficient technical knowledge of the Government's Supported Product environment to enable effective communication with our support center.

Procurement

Enterprise Support: the Government may select support for all Supported Products that are part of the Government's system environment. The Government will provide an initial inventory of Supported Products, including the machines on which they are installed, and inform IBM of inventory changes (additions/removals) prior to each fiscal year renewal. The Government's machine and Supported Product install base at the start of each contract year will be used to determine charges for that year.

Charges for this option are calculated by taking into account the Supported Product install base, and the total amount is uplifted by 5%. Charges for coverage are established at the beginning of the term/renewal period and remains fixed through September 30 of each year. Each fiscal year thereafter the Government's charges are reset, taking into account the additions and deletions of

supported products or platforms that occurred during the prior fiscal year. Additional charges will occur during the year if the Government chooses to add Optional Features, Full-Shift coverage, or Account Advocate.

Linux Product Subscription Option

For Supported Products in the Linux support group, you may also order this subscription option as an added Support Line Service feature. Under this feature, IBM will assist you in the ordering and receipt of eligible Linux subscription products. You and IBM will each identify a subscription coordinator who will be their focal point for all your Linux supplier-licensed subscription product orders and deliveries under this Support Line Service feature.

The Linux supplier-licensed software is directly distributed and licensed to you by the Linux supplier under the terms and conditions of the supplier's end user license agreement ("EULA"). While IBM may have placed the order with supplier for the supplier-licensed software on your behalf, as a convenience for you, you acknowledge and understand that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the Linux supplier-licensed software. While the Linux supplier may provide you with certain warranties, representations, or indemnities under the EULA, IBM is not providing, whether express or implied, any warranty, representation, indemnity, or other license with respect to the Linux supplier-licensed software and is merely providing Services under this agreement on your behalf at your request. Without limiting the generality of the foregoing, IBM is providing no indemnity for any claim or alleged claim that all or any portion of the Linux supplier-licensed software may infringe a third party's intellectual property right.

Termination/Withdrawal

The Government may terminate a Support Line service or optional feature on one month's written notice after it has been covered under the Service for at least three months. Should the Government be dissatisfied with the Operational Support Service within 30 days after its effective date, the Government may terminate the service without a penalty.

Should the Government terminate service during the first fiscal year after initially acquiring the service, except as otherwise stated above, the Government is required to pay IBM a termination charge equal to the amount of payments remaining until the end of the fiscal year. The Government may not terminate Support Line if the Government has elected to continue feature support.

The Government's obligation to continue Support Line service is contingent on the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance beyond the end of the fiscal year until funds are made available to the Contracting Officer for performance and until IBM receives notice of availability to be confirmed in writing by the Contracting Officer.

IBM may withdraw Service for a support group on the Supported Products List on three months' notice to the Government. Other changes to the Supported Products List (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Support Products List at http://www.ibm.com/services/sl/products as they occur. Renewal orders will not be accepted once a product has been withdrawn, or has reached its end of currency. The Government agrees to pay IBM for all Services IBM provides and any Materials IBM delivers through Service termination.

7.29.2 IBM SOFTWARE SUPPORT SERVICES – ACCOUNT ADVOCATE

IBM Software Support Services – premium support - account advocate support comprises three Enhanced Service Modules: Priority Access, Priority Response, and Priority Handling, that will provide you with premium remote voice and electronic entry into and handling within IBM's product support structure. This Service also enhances your support under your ("Base Support Contracts") and provides a single point of entry into IBM's support structure for reporting problems relating to your Eligible Machines and Programs. This Service also enhances your access to a Priority Support Team which includes an Account Advocate.

You must maintain Base Support Contracts for all Eligible Machines/Programs for which you select this coverage. This service description details the support enhancements (above your Base Support Contracts) to which you are entitled for your covered Eligible Machines/Products. Unless changed in this service description, the provisions of all the Base Support Contracts remain in effect.

This specific Service is intended for Machines physically located within the United States. This service description details the support enhancements (above your Base Support Contracts) to which you are entitled for your Account Advocate Eligible Machines/Programs.

This service description is structured that general account advocate terms are set out in the main body of the text and product unique Account Advocate terms are set out later in the text by product group. Only those activities specified in this service description are included with the account advocate service; other tasks for which you request support will be contracted separately for an additional charge.

Definitions

Base Support Contracts – **is IBM Support Line, IBM Sofware Maintenance for OS/400, I5/OS and Selected Products, IBM Software Maintenance for AIX Operating Systems, IBM Passport Advantage, IBM Hardware Maintenance and IBM ServicePac.**

Account Advocate **is a member of the Priority Support Team that is responsible for ensuring the provision of all aspects of the Account Advocate Service outline under this Service;**

Eligible Machines/Programs are those IBM software and hardware products eligible for this Service as identified at IBM's Internet address http://www-1.ibm.com/services/sl/products/ or listed in your IBM schedule of services. When accessing internet address, refer to the enhanced technical support Service for Eligible Machines/Programs.

Eligible Machines/Programs are grouped by Operating System (OS) and the Server types on which the OS is installed.

The following is a list of Eligible Machines/Programs for the designated eligible OS:

AIX/OS400/i5OS - IBM System i5, IBM Server iSeries, IBM System p5, and IBM Server pSeries

Linux - IBM System i5, IBM Server iSeries, IBM Server pSeries, IBM System p5, IBM Server xSeries, IBM System x3, and x86 based OEM

Microsoft - IBM Server xSeries, IBM System x3, and x86 based OEM

Enhanced Service Modules means collectively Priority Access, Priority Response and Priority Handling.

Off Shift means all hours outside of Prime Shift.

Periodic Service Status Update means a mutually agreed to scheduled conference call between your Point of Contact and the assigned Account Advocate.

Primary Technical Contact (PTC) is your representative to whom IBM may direct general technical information pertaining to the Services. The PTC must have sufficient technical knowledge of Eligible Programs and Eligible Machines environment to enable effective communication with IBM's Support Center.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

Priority Access means the process by which you report problems to the Priority Support Team relating to your Eligible Programs/Products and other associated IBM products for which you maintain a current IBM support contract.

Priority Handling means for those covered Eligible Programs/Products the Priority Support Team will engage and coordinate all the appropriate resources to resolve your reported problems.

Priority Response means IBM base support response time commitments are enhanced under this Service.

Priority Support Team means IBM's team of personnel that will provide a single point of entry for your voice and electronic queries in support of the Enhanced Service Modules under this Service.

Response Time means the elapsed time between receipt by the Priority Support Team of a problem submission, and the acknowledgement of the submission**.** IBM's initial response may result in technical resolution of your problem or it may form the basis for determining what additional actions are required. Refer to the IBM Software Support Handbook for call handling process by severity at: http://techsupport.services.ibm.com/guides/beforecontacting.html

Server location – is all eligible machines must be physically located within the United States.

Service Modules means collectively Priority Access, Priority Response and Priority Handling Service modules define what your remote support service will provide.

IBM Responsibilities

Service Modules – Priority Access

IBM will provide an Account Advocate who is a member of the Priority Support Team and who will work with your designated Point of Contact ("POC") to establish and maintain a framework for technical communications and contractual activities.

The Account Advocate will:

1. review the Services contract and any other applicable documentation as part of a welcome call;
2. review your Eligible Programs/Products under the Service;

3. review the primary escalation path for your Eligible Programs/Products; and
4. schedule Periodic Service Status Update calls with your designated POC.

Enhanced Service Modules

Priority Access

IBM will provide you with direct access to a team of skilled resources known as the Priority Support Team who will provide an initial point of contact for your problem submissions related to your Eligible Machines/Programs and other IBM products associated with servers for which you have purchased support under this Service. You may submit problem management records (via remote voice or electronic problem reporting). Your remote voice response support is achieved using your Direct Access Code ("DAC") when you submit a problem. If the problem is related to an Eligible Program(s) installed on a machine for which you have purchased support under this Service, you will receive Priority Handling as set out below. If the reported problem is related to another IBM software or hardware product associated with a server for which you have purchased support under this Service, the Priority Support Team will engage the appropriate specialist team on your behalf. This engagement requires that you have a valid support contract for that IBM product. Once the specialist support team for that product is engaged, service will be provided under the terms and conditions of that contract (not this Account Advocate Service).

Priority Response

Your problem submissions to the Priority Support Team for Eligible Machines/Programs will receive enhanced Response Times as detailed below. These Response Times detail how quickly the Priority Support team will respond based on the Severity of the problem and the time that you report it. IBM's initial response may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. Response Times for Off Shift problem submissions are only valid if you have contracted for coverage during Off Shift.

For telephone assistance:

Severity ("Sev") 1 Calls – Thirty (30) minutes Response Time during Prime Shift and thirty (30) minutes during Off Shift. Exception: for Microsoft products, Off-Shift response time is sixty (60) minutes.

Sev 1 Calls are defined as a system down situation. Customer is unable to use the product which has a critical impact on operations. No backup is available.

Sev 2 Calls – One (1) hour Response Time during Prime Shift and two (2) hours during Off Shift.

Sev 2 Calls are defined as customer is able to use the product, but operations are severely restricted by the problem.

Sev 3 & Sev 4 Calls – Two (2) hours Response Time during Prime Shift and four (4) hours during Off Shift.

Sev 3 Calls are defined as customer is able to use the product with some restrictions on the function that is available. These restrictions do have an impact on overall operation.

Sev 4 Calls are defined as problems that cause little or no impact to the operations. A way to circumvent the problem has been found.

For electronic assistance:

All Sev levels - Two (2) hour Response Time for submissions received during Prime Shift. For submissions received during Off Shift, Response Time is within two (2) hours after the start of Prime Shift on the next business day. IBM is not responsible for delays caused by systems and network problems.

IBM will use commercially reasonable efforts to achieve the Response Time objectives set out above. However, IBM's failure to do so will not constitute a breach, material or otherwise, will not result in IBM being liable for damages, service level credits or other amounts, and will not otherwise provide any additional rights to you.

Priority Handling

The Priority Support Team will provide priority handling of your reported problems related to Eligible Machines/Programs on servers for which you have contracted this Service. The Priority Support team will:

1. perform initial problem determination and problem source identification;
2. engage the appropriate specialist support resources when required;
3. monitor the progress of your problem submissions for Eligible Machines/Programs;
4. coordinate service resources as necessary; and
5. ensure provision of follow-up status that is appropriate to the severity level assigned to the submitted problem. This includes invoking IBM's predefined escalation guidelines until the problem is resolved. Target status update intervals are as follows--

   Sev 1: Follow up with the customer every four (4) hours, or as mutually agreed.

   Sev 2: Follow up with the customer (during Prime Shift) daily or as mutually agreed.

   Sev 3 and Sev 4: Follow up with the customer (during Prime Shift) when progress has been made.

Your Responsibilities

You agree to:

1. maintain, for the duration of this Service, the appropriate base support contracts (including coverage hours) for all Eligible Programs/Products to be covered by this Service. If you terminate any of your base support contracts (or change the coverage hours), you must immediately notify the IBM Account Advocate who will help to determine the appropriate changes to your coverage under this Service;
2. designate a Point of Contact (POC) who will be the focal point for all communication with IBM's Account Advocate relative to this Service and who will have the authority to act on your behalf in matters regarding this Service. Your POC will--

   a. inform the IBM Account Advocate of any hardware or software changes to your Eligible Programs/Products environment within thirty (30) days of the change occurring. Failure to provide timely updates may result in Service delays or lack of coverage, and

b. designate a contact that will be the focal point for problem submissions by you to the Priority Support Team;

3. obtain and provide information, data, decisions and approvals, within three (3) business days of IBM's request, unless both parties mutually agree to an extended response time;
4. ensure the appropriate personnel for activities, described in this Service, are made available by your organization. This includes your being able to help resolve issues via escalation within your organization;
5. review on a regular basis, the product listings at http://www-1.ibm.com/services/sl/products/ to determine whether there have been any additions or deletions (for example, products removed at their end of currency date) that may impact the product support you are receiving under this Service. Questions regarding such changes should be directed to your Account Advocate; and
6. supply your DAC code in order to receive support on your Eligible Programs/Products.

Termination

You may terminate this Service on one month written notice to IBM after the initial contract year. Termination of this Service does not terminate or modify any of your base support contracts. Since this Service requires you to have base support contracts in place for all IBM Eligible Programs/Products to be covered by this Service, you may not terminate the associated base support contract during the initial contract year; thereafter, if you terminate the associated base support contract, you must also terminate the applicable Account Advocate Service support.

CHAPTER 8 TABLE OF CONTENTS

CHAPTER 8. SPECIAL ITEM 132-62: AUTHENTICATION PRODUCTS AND SERVICES 1

TERMS AND CONDITIONS 1
8.1. ORDER 2
8.2. PERFORMANCE OF SERVICES 2
8.3. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) 3
8.4. INSPECTION OF SERVICES 3
8.5. RESPONSIBILITIES OF THE ORDERING ACTIVITY 3
8.6. INDEPENDENT CONTRACTOR 4
8.7. ORGANIZATIONAL CONFLICTS OF INTEREST 4
8.8. INVOICES 4
8.9. PAYMENTS 4
8.10. RESUMES 5
8.11. INCIDENTAL SUPPORT COSTS 5
8.12. APPROVAL OF SUBCONTRACTS 5
ADDITIONAL IBM TERMS 5
8.13 REQUIRED CONSENTS 5
8.14 PERSONNEL 5
8.15 ACCEPTANCE 6
8.16 MATERIALS OWNERSHIP AND LICENSE 6
8.17 WARRANTY FOR IBM SERVICES 6
LABOR CATEGORIES AND DESCRIPTIONS 8
LABOR RATES 16

CHAPTER 8. SPECIAL ITEM 132-62: AUTHENTICATION PRODUCTS AND SERVICES

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM IT Professional Services that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472) the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item will be available to the Government within the United States, the District of Columbia and Puerto Rico. Such sales will be made to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform Services to overseas U.S. Government locations which are in support of national defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

General Background

Authentication Products and Services provide for authentication of individuals for purposes of physical and logical access control, electronic signature, performance of E-business transactions and delivery of Government services. Authentication Products and Services consist of hardware, software components and supporting services that provide for identity assurance.

Homeland Security Presidential Directive 12 (HSPD-12), “Policy for a Common Identification Standard for Federal Employees and Contractors” establishes the requirement for a mandatory Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractor employees assigned to Government contracts in order to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Further, the Directive requires the Department of Commerce to promulgate a Federal standard for secure and reliable forms of identification within six months of the date of the Directive. As a result, the National Institute of Standards and Technology (NIST) released Federal Information Processing Standard (FIPS) 201: Personal Identity Verification of Federal Employees and Contractors on February 25, 2005. FIPS 201 requires that the digital certificates incorporated into the Personal Identity Verification (PIV) identity credentials comply with the X.509 Certificate Policy for the U.S. Federal PKI Common Policy Framework. In addition, FIPS 201 requires that Federal identity badges referred to as PIV credentials, issued to Federal employees and contractors comply with the Standard and associated NIST Special Publications 800-73, 800-76, 800-78, and 800-79.

Special Item Number

IBM offers SIN 132-62 which includes:

Established for products and services for agencies to implement the requirements of HSPD-12, FIPS-201 and associated NIST special publications. The HSPD-12 implementation components specified under this SIN are:

- PIV enrollment and registration services,
- PIV systems infrastructure,
- PIV card management and production services,
- PIV card finalization services,
- Physical access control products and services,
- Logical access control products and services,
- PIV system integration services, and
- Approved FIPS 201-Compliant products and services.

8.1. ORDER

a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering authentication products and services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

c. When placing an order, ordering activities may deal directly with the contractor or ordering activities may send the requirement to the Program Management Office to received assisted services for a fee.

8.2. PERFORMANCE OF SERVICES

a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d. Any Contractor travel required in the performance of the Services under this SIN 132-62 must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

8.3. Stop-Work Order (FAR 52.242-15) (Aug 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

8.4. Inspection Of Services

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time and Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time and materials and labor ¬hour orders placed under this contract.

8.5. Responsibilities Of The Ordering Activity

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite services.

8.6. Independent Contractor

All services performed by the Contractor under the terms of this contract shall be an independent Contractor, and not as an agent or employee of the ordering activity.

8.7. Organizational Conflicts Of Interest

a. Definitions.

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

8.8. Invoices

The Contractor, upon completion of the work ordered, shall submit invoices for products and/or services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

8.9. Payments

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time and materials orders, the Payments under Time and Materials and Labor Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time and materials orders placed under this contract. For labor hour orders, the Payment under Time and

Materials and Labor Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor hour orders placed under this contract. IBM's rates identified herein shall apply to labor performed by IBM, its Subcontractors, and/or Divisions, subsidiaries, or affiliates of IBM under a common control.

8.10. Resumes

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

8.11. Incidental Support Costs

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

8.12. Approval Of Subcontracts

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

Additional IBM Terms

8.13 Required Consents

The Government is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in a Statement of Work. A Required Consent means any consents or approvals required to give IBM or our subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and our subcontractors to perform the Services set forth in the Statement of Work without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such product. IBM will be relieved of the performance of any obligations that may be affected by your failure to promptly provide any Required Consents to IBM.

8.14 Personnel

Each of us is responsible for the supervision, direction, control, and compensation of our respective. personnel.

IBM reserves the right to determine the assignment of its personnel.

IBM may subcontract a Service, or any part of it, to subcontractors.

8.15 ACCEPTANCE

For services having Completion Criteria identified in the Statement of Work, acceptance occurs when IBM meets the Completion Criteria.

For hourly services, acceptance occurs upon completion of the service hours.

8.16 MATERIALS OWNERSHIP AND LICENSE

IBM will specify materials to be delivered to the Government. They will be identified as being "Type I Materials," "Type II Materials," or otherwise as mutually agreed upon. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which the Government has all right, title and interest (including ownership of copyright). IBM will retain one copy of the Materials. IBM is granted 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former. With respect to data or materials of a proprietary nature, IBM will safeguard the data or materials in accordance with the terms of a mutually agreeable Confidential Disclosure Agreement.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which IBM or third parties have all right, title and interest (including ownership of copyright). IBM will deliver one copy of the specified Materials to the Government. IBM grants the Government an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Government agency, copies of Type II Materials.

Both IBM and Government agree to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this item.

Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either IBM or the Government, or jointly, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either the Government or IBM.

8.17 WARRANTY FOR IBM SERVICES

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in an Attachment or Statement of Work.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT

LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of any deliverable or Service or that IBM will correct all defects. Unless IBM specifies otherwise. It provides Materials and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However, non-IBM suppliers may provide their own warranties to you.

LABOR CATEGORIES AND DESCRIPTIONS

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Security Project Executive	Up to 20 years of progressive experience. Acts as a management authority for client engagements. Performs management of overall contract support operations, organizes, directs and coordinates the planning and production of contract support activities. Manages and coordinates resources, satisfying contract terms, and securing customer satisfaction. Monitors progress of project. Provides primary interface with client management personnel regarding strategic issues. (HSPD-12) Certification required: CISA, CISM or CISSP.
Trusted Identity Security and Privacy SME	Up to 15 years of progressive accomplishment as experts in large and complex information technology systems implementation. Under minimal direction, provides support for security related programs, policies and initiatives. Develops, establishes, and applies knowledge of security principles, concepts and industry practices and standards in the analysis of information and projects. Provides a solid understanding of federal information security/assurance policies, standards and regulations. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include credentialing topics such as PKI, biometrics, and smart cards. Utilizes his/her advanced skills and experience in systems development, detailed knowledge of business processes, technical background and security skills to implement business and security solutions. Performs analysis of security related risks, threats and vulnerabilities of systems, networks and applications. Recommends strategies to prevent security exposure and detect intrusions. Provides direction to IBM project teams and interact with clients at the supervisory level. (HSPD-12) Certification required: CISA, CISM, CISSP
Senior Web Architect	Up to 15 years of progressive experience. Leads or supports requirements analysis, design, development or maintenance of technical integrations or infrastructures for internal and external web applications, protocols, SOA implementations and interfaces. Certified as CISSP, CISM or CISA. Supports HSPD-12, Real ID and other credentialing initiatives or smartcard implementations.
Trusted Identity Project Manager	Up to 15 years of progressive experience. Acts as the overall lead - manager and administrator for the contract effort.

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	Manages all phases of projects from inception through completion. Establishes milestones, and monitors adherence to master plans and schedules. Implementing detailed management techniques such as Critical Path Method (CPM) and Earned Value Analysis. Detailed functional analysis and gap/fit analysis of Government-Off-the-Shelf (GOTS) and/or Commercial-Off-the-Shelf (COTS) software packages. Expert in Security Management. Knowledgeable of GSA HSPD 12 authorized products and services, Real ID requirements, and NIST standards. Detailed migration planning and trade-off analysis. Certification requirements: CISA, CISM, CISSP. Directs daily staff and task activities to meet client and corporate work objectives. Works with team members to resolve difficult problems. (HSPD-12)
Trusted Identity Quality Assurance Specialist - Senior	Up to 15 years of progressive experience. Able to execute the QA/QC process by reviewing work products for correctness, and adherence to the design concepts an standards, and reviewing program documentation to ensure adherence to standards and requirements. Coordinate with the project manager to ensure problem resolution and client satisfaction. Knowledgeable of FISMA, NIST and other security standards and regulatory mandates. Review software design, change specifications, and related plans against contractual requirements. (HSPD-12)
Trusted Identity Systems Architect/ Engineer - Lead	Up to 15 years of progressive accomplishment as experts in large and complex information technology systems implementation. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Ensures proper governance of program architecture. Able to design and develop new IT products based on client requirement and technical drivers. Performs major enhancements to existing IT systems. Serves as a technical expert, addressing problems of systems integration, compatibility, and multiple platforms. Evaluates and recommend appropriate hardware and network infrastructure based on cost, performance, need, quality, security and reliability. Strong understanding of network security including configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, secure telecommunications, two-factor authentication, encryption, PKI/Digital certificates, SSL based VPN solutions, web protocols and Identity Management. (HSPD-12)

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Identity Management Privacy Analyst	Up to 12 years of progressive accomplishment as experts in large and complex information technology systems implementation. Creates analyses and develops strategies, policies, architectures, and privacy assessments to meet Federal mandates. Implements privacy practices in the organization, including collaboration with all the necessary functions (e.g. Legal, ADS, and HR etc). Knowledgeable of NIST PIV requirements, HSPD 12 and State privacy laws in support of Real ID. Monitors all ongoing activities related to the development, implementation, maintenance of, and adherence to, the organization's policies and procedures covering the privacy of, and access to, customer personal information in compliance with Federal law. Extend compliance process to all affiliated and non-affiliated third parties as appropriate. (HSPD-12)
Trusted Identity Training Lead – Senior	Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Leads the effort to design, develop, implement, and conduct training and instructions of technical-based subject matter. Defines training requirements, training objectives and test methods and designs instructionally valid training materials. Develops computer-based training objectives and methodologies. Coordinates with subject matter expert to design training strategy; designs courseware, including structuring training classes, creates lesson text, provides documentation for software training, tests training programs, presents training programs to users. May conducts research into new training, educational and multimedia technologies. (HSPD-12)
Quality Assurance Analyst	Up to 10 years of progressive experience. Provides IV&V, QA/QC, survey and testing services by reviewing trusted identity processes ,technologies or work products for correctness and adherence to NIST standards, design concepts or and reviewing program documentation and requirements. Knowledgeable of FISMA, NIST and other security standards and regulatory mandates. Certified CISSP, CISA or CISM.
Business Operations Specialist - Senior	Up to 8 years of progressive experience. Supports level of project business activity by planning, directing, and coordinating the total operations of the project. Monitors daily operations to ensure contract requirements are met. Keeps abreast of major situations affecting service to customer and ensures all aspect of client satisfaction. (HSPD-

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	12)
Identity Management IT Systems Engineer	Up to 12 years of progressive experience. Applies logical analyses or test and evaluation on programs within the contractual scope. Analyzes user needs and identifies resources required for each task to determine functional requirements. Assists in designing and development of new systems or modifies existing systems according to client's needs. Assists higher-level analysts in analyzing alternative systems, cost aspects and feasibility factors. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. (HSPD-12)
Security Change Management Consultant - Mid Level	Up to 12 years of progressive experience. Applies organizational change management processes and methodologies to facilitate communication of change messages. Prepares, maintains and inventories associated technical drawings for assigned projects. Researches data, and creates and maintains inventory and other databases for assigned projects. Prepares configuration change requests and verifies tracks and documents configuration changes. (HSPD-12)
Trusted Identity Database Administrator	Up to 10 years of progressive experience .Act as the overall lead and manager of database system management projects. Design software tools and subsystems to support and manage software systems implementation. Manage software development and support using formal specifications, data flow diagrams, other accepted design techniques, and Computer Aided Software Engineering (CASE) tools. Knowledgeable of supporting database packages supporting privacy and security for the protection of and administration of identities. Knowledgeable of entity analytics software packages is desired. Provide technical expertise and guidance in the logical and physical database design, development, transition, operation and maintenance of database management systems. (HSPD-12)
Security Business Process Functional Senior Analyst – Senior	Up to 10 years of progressive experience. Serves as lead BPR functional Subject Matter Expert (SME) in their area of specialty. Applies their broad skills and specialized functional and technical expertise to guide project teams in delivering client solutions or to manage the day-to-day operations of IBM projects. Core job responsibilities to include design and implement new organizational structures, assist client to translate its vision and strategy into core

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	human resource and business process. Lead clients through streamlining, reengineering and transforming business processes. (HSPD-12)
Trusted Identity Senior Computer Specialist/ Programmer	Up to 10 years of progressive experience. Defines business and technical requirement, establish scope, project plans, priorities and manage the efforts in delivering software applications. Design software tools and subsystems to support and manage software systems implementation. Manage software development and support using formal specifications, data flow diagrams, other accepted design techniques, and Computer Aided Software Engineering (CASE) tools. Provides leadership knowledge of computer science principles to perform complex software engineering assignments relative to the modification and/or development of software systems. Manages, formulates and develops systems or subsystems architecture, requirements, and design documents. (HPSD-12)
Web Architect	Up to 8 year of progressive experience. Provides support and design, develop and maintain a technical infrastructure for internal and external web applications. Develops web pages, page components and web application code/components for client. Manages designs, codes, tests, debugs and document programs. Participates in the technical design, development, testing, implementation and maintenance of client's website. (HSPD-12)
Identity Management Systems Security Engineer	Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Experience to include defining computer security requirements for high-level applications, evaluation of approved security product capabilities, and developing solutions to Multilevel Security (MLS) problems. Analyzes and defines security requirements for MLS issues. Designs, develops, engineers, tests and implements solutions to MLS requirements. Responsible for implementation and development of MLS. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Participates in planning and installation of new security related hardware and networks. Strong understanding of network security including configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, routers, bridges, two-factor authentication, encryption, PKI/Digital certificates, SSL based VPN solutions and Identity

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	Management. (HSPD-12)
Trusted Identity Computer Security Analyst	Up to 8 years of progressive experience. Analyze criteria for access controls, storage, reproduction, transmission, and destruction of data maintained automated systems requiring protection. Performs IT security assessments and evaluations. Plans and conducts security risk analysis, security evaluations, and audits of information processing system Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Determines computer security compliance and effectiveness of information processing systems. Performs security awareness training. Strong understanding of network security including configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, routers, bridges, two-factor authentication, encryption, PKI/Digital certificates, SSL based VPN solutions and Identity Management. (HSPD-12)
Trusted Identity Computer Specialist/ Programmer	Up to 7 years of progressive experience. Provides mid-level analytical and problem solving skills when addressing and resolving issues, assessing possible system impacts, and recommending technical solutions. Provides knowledge of computer science principles to perform complex software engineering assignments relative to the modification and/or development of software systems. Performs software algorithm development, design, coding, and documentation work of systems. Familiar with modeling in UML using Rational Rose Real-time, coding in C++ using Rational Rose Real-time, C++ development using Microsoft Visual, GUI development in a Windows environment, and Object Oriented Design. (HSPD-12)
Security Business Process Functional Analyst	Up to 5 years of progressive experience. Provides BPR subject matter expertise to assist in implementing business process solutions. Assists in client's current business process flows. (HSPD-12)
Identity Management IT Software Specialist	Up to 8 years of progressive experience. Provides assistance in addressing software issues during IT engagements. Delivers a set of functional and technical services to assess, plan and implement software process improvement efforts for software development and maintenance to keep abreast with technological progress, economic change, and business needs. Involvement with software and hardware upgrades, planning and roll out of desktop and Laptop PC's.

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	Knowledgeable of Web applications or Tivoli TIM/TAM/FIM. Review existing software programs and assist in making refinements, reducing operating time, and improving current development methods. (HPSD-12)
Trusted Identity Database Analyst	Up to 6 years of progressive accomplishment as experts in large and complex information technology systems implementation. Perform data analysis, database design, development activities, and implementation, as directed, for databases and database conversions. Develop and test logical and physical database designs. Review logical and physical designs of existing databases and perform tuning, in coordination with the DBA to ensure maximum operating efficiency. (HSPD-12)
Trusted Identity IT Hardware Specialist	Up to 6 years of progressive experience. Provides assistance in addressing hardware issues during IT engagements. Ability to work with client, identifies issues, and quickly provides resolution. Assist with the deployment of hardware to client including installation, configuration and testing. Analyzes customer LAN/WAN hardware/software Requirement. Designs LAN/WAN and recommends hardware, software, and communications solutions. Provides recommended solutions for future LAN/WAN growth. Provides solutions for problems incurred during LAN/WAN installations. Provides after-hours service for escalated issues. (HSPD-12)
Trusted Identity Trainer	Up to 6 years of progressive experience. Conducts the research necessary to develop and revise training courses and prepares appropriate training catalogs. Prepares all instructor materials (course outline, background material, and training aids). Prepares all student materials (course manuals, workbooks, handouts, completion certificates, and course critique forms). Train personnel by conducting formal classroom courses, workshops, and seminars. Provides daily supervision and direction to staff. (HSPD-12)
Trusted Identity Database Programmer	Up to 5 years of progressive experience. Performs analysis and programming of databases. Under general direction, designs, implements, and maintains moderately complex databases with respect to operating system, access control methods, validation checks, organization and statistical methods. Maintains database dictionaries, and integrates system through database design. (HSPD-12)
Security Document/Technical Writer	Up to 3 years of progressive experience. Reviews and edits highly complex written and graphic technical materials, including system configuration, documentation, studies, reports and other presentation graphics. Plans, writes, and maintains documentation pertaining to procedures, internal

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	references manuals and knowledge bases. (HSPD-12)
Business Operations Specialist - Junior	Up to 3 years of progressive experience. Supports basic day-to-day functional management activities within the PMO. Maintain responsibility for budgeting, internal coordination, and reporting, estimating and financial analysis for the project. (HSPD-12)
Identity Management Computer Specialist/Data Entry – Junior	Up to 3 years of progressive experience. Applies knowledge of computer science principles to perform software engineering assignments relative to the modification and/or development of software systems. Formulates and develops systems or subsystems architecture, requirements, and design documents. Performs software algorithm development, design, and coding, of systems. Familiar with Tivoli TIM/TAM/FIM or WebSphere and other Web development software packages. (HPSD-12)
Trusted Identity Help Desk Specialist	Up to 2 years of progressive experience. Under direct supervision, provides customer assistance with routine inquiries, and problems such as software, hardware and network operations. Responds to and diagnoses problems through discussions with users. Includes problem recognition, research, isolation, and resolution steps. (HSPD-12)
Trusted Identity IT System Analyst - Junior	Up to 3 years of progressive experience. Assists Sr. IT Systems Analyst in preparing input and test data for the proposed system. Help develop plans for systems form project inception to conclusion. Analyzes the problem and information to be processes. Assists in designing and development of new systems or modifies existing systems according to client's needs. (HSPD-12)

LABOR RATES

Proposed GFY08-GFY12 SIN 132-62 Rates					
Labor Category	**GFY08**	**GFY09**	**GFY10**	**GFY11**	**GFY12**
Security Project Executive	$272	$278	$284	$292	$300
Trusted Identity Security and Privacy SME	$242	$248	$254	$261	$268
Senior Web Architect	$226	$231	$236	$243	$249
Trusted Identity Project Manager	$195	$199	$204	$210	$216
Trusted Identity Quality Assurance Specialist-Senior	$195	$199	$204	$210	$216
Trusted Identity Systems Architect/ Engineer - Lead	$195	$199	$204	$210	$216
Identity Management Privacy Analyst	$180	$184	$188	$193	$198
Trusted Identity Training Lead – Senior	$170	$174	$178	$183	$188
Quality Assurance Analyst	$159	$163	$167	$172	$177
Business Operations Specialist - Senior	$154	$158	$162	$167	$171
Identity Management IT Systems Engineer	$154	$158	$162	$167	$171
Security Change Management Consultant - Mid Level	$154	$158	$162	$167	$171
Trusted Identity Database Administrator	$154	$158	$162	$167	$171
Security Business Process Functional Senior Analyst – Senior	$150	$153	$157	$162	$166
Trusted Identity Senior Computer Specialist/ Programmer	$150	$153	$157	$162	$166
Web Architect	$144	$147	$150	$154	$158
Identity Management Systems Security Engineer	$144	$147	$150	$154	$158
Trusted Identity Computer Security Analyst	$144	$147	$150	$154	$158
Trusted Identity Computer Specialist/ Programmer –	$144	$147	$150	$154	$158
Security Business Process Functional Analyst	$134	$137	$140	$144	$148
Identity Management IT Software Specialist	$129	$132	$135	$139	$143
Trusted Identity Database Analyst	$129	$132	$135	$139	$143
Trusted Identity IT Hardware Specialist	$129	$132	$135	$139	$143
Trusted Identity Trainer	$126	$129	$132	$136	$140
Trusted Identity Database Programmer	$123	$126	$129	$133	$137
Security Document/Technical Writer	$118	$121	$124	$128	$131
Business Operations Specialist - Junior	$113	$116	$119	$122	$125
Identity Management Computer Specialist/Data Entry – Junior	$93	$95	$97	$100	$103
Trusted Identity Help Desk Specialist	$93	$95	$97	$100	$103
Trusted Identity IT System Analyst - Junior	$93	$95	$97	$100	$103
	Rates include .75% IFF				

CHAPTER 9 TABLE OF CONTENTS

CHAPTER 9. SPECIAL ITEM NUMBER 132-52: ELECTRONIC COMMERCE 1

TERMS AND CONDITIONS 1
IBM OFFERINGS 5
1. IBM Mobile Enterprise Service for the BlackBerry Enterprise Solution 5
2. IBM's Software As A Service Offering (SaaS) 9
2.1. Overview of SaaS Offerings 9
2.2 SaaS Terms of Use 11
2.3 Offering Unique Terms and Conditions 16
2.4 Acceptable Internet Use Policy for IBM Services 19
3. IBM's Federal Community Cloud Offering 21
3.1 General 21
3.2 Definitions 22
3.3 Services 23
3.4 Content 24
3.5 Charges & Payment 25
3.6 Changes 26
3.7 Warranties and Disclaimers 27
3.8 Term, Termination and Suspension 27
3.9 General Principles of Our Relationship 28

CHAPTER 9. SPECIAL ITEM NUMBER 132-52: ELECTRONIC COMMERCE

******NOTE: If offering IT Professional Services with E-Commerce use SIN 132-51 and include the Terms and Conditions applicable to the IT Professional Services offered.**

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM IT Professional Services that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472) the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item will be available to the Government within the United States, the District of Columbia and Puerto Rico. Such sales will be made to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform Services to overseas U.S. Government locations which are in support of national defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

1) SCOPE

a) The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

b) The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2) PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

a) Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract .

b) The ordering activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.

c) Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks. Incentives shall be based on objectively measurable tasks.

3) ORDER

a) Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase

Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

b) All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4) PERFORMANCE OF SERVICES

a) The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

b) The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

c) The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d) Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

5) STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

   1) Cancel the stop-work order; or

   2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

c) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

d) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action,

the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

e) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

6) INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time and Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time and materials and labor ¬hour orders placed under this contract.

7) RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

8) RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

9) INDEPENDENT CONTRACTOR

All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

10) ORGANIZATIONAL CONFLICTS OF INTEREST

a) Definitions.

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

b) To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the

schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11) INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12) PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time and materials orders, the Payments under Time and Materials and Labor Hour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time and materials orders placed under this contract. For labor hour orders, the Payment under Time and Materials and Labor Hour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

   1) The offeror;

   2) Subcontractors; and/or

   3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13) INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

14) APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

15) DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING

a) The Contractor shall provide a description of each type of EC Service offered under Special Item Numbers 132-52 E-Commerce. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other ordering activity

customers. Please submit a description of all corresponding commercial EC services to be provided.

b) Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.

IBM OFFERINGS

1. IBM MOBILE ENTERPRISE SERVICE FOR THE BLACKBERRY ENTERPRISE SOLUTION

IBM's Mobile Enterprise Services for the BlackBerry offering (BES) provides the Government customer with services that can help effectively manage your Blackberry environment. This service is designed to help simplify the management of the Customer's Blackberry solution with a comprehensive managed service that helps optimize the availability and performance of your Blackberry environment, integrate it with your existing enterprise IT support model, and help enhance your return on your mobility investment. This service consolidates the technical, administrative, and licensing costs to your Blackberry Enterprise solution, on a per-user, per-month basis, allowing you to project and budget costs. A dedicated team of Blackberry certified professionals will handle all aspects of the implementation of your mobility strategy, including architecture, deployment, and steady-state operations.

IBM Mobile Enterprise Services for the BlackBerry® Enterprise Solution helps simplify the management of your BlackBerry solution with comprehensive managed services that optimize the availability and performance of your BlackBerry environment, integrating with your existing enterprise IT support model. These Services include:

- Reviewing Customer BlackBerry enterprise infrastructure and mobility strategy
- Management, monitoring, optimization, and maintenance of your BlackBerry solution within your IT environment
- BlackBerry Enterprise Server upgrades
- 24 x 7 Self Service Portal for Mobile User activation and self help
- Advanced Mobile Device Management functions, such as "remote wipe and kill"
- Assistance with device configuration, setup and troubleshooting
- The Government may choose the Service with or without Support and problem resolution for end users (Level Two and Level Three Support)
- Enhanced ability to reduce your data and voice roaming charges through the use of Real Time Cost Management
- Dynamic over the air application distribution

The Services include applicable Research in Motion Limited (RIM) BES Software license fees and eliminates the need for you to purchase a RIM technical support agreement to support the BES Software.

In order for IBM to provide the Services, Customer must have the prerequisite physical layer of the Blackberry Enterprise Solution in place as defined by RIM (i.e., the server(s) and operating system that meet the minimum specifications for the then current BES Software).

IBM will present a detailed Statement of Work at the opportunity level that will include such details as the scope of work, responsibilities, completion criteria and deliverables.

1) Service Period

The service period ("Service Period") for these Services will begin the day after IBM receives a funded delivery order, or at a date otherwise agreed to by IBM and will continue in effect for a minimum of 12 months, unless terminated earlier in accordance with the terms herein. IBM will have fulfilled its obligations with regard to these Services upon the expiration of the Service Period or termination of this SOW.

The Government may continue service for a subsequent 12 month period by providing IBM with a funded delivery order or notification of their intent to renew prior to the end of the current Service Period. Pricing for the renewal will be provided to the customer at the then current GSA Schedule price. Should an agency notify IBM of their intent to renew, continue to use the service and then not provide a funded delivery order to IBM, the agency will be billed for the months the service was used.

2) Charges

The charges for this offering are outlined in the price table for this SIN 132-52.

Transition Charge

Customer is required to pay a one-time transition charge upon completion of Phase Two – Implementation and Transition.

Monthly Recurring Charges

The monthly recurring charges listed in each of the subsections below will be applied to all Registered Mobile Users.

Monthly Recurring Charge for Registered Mobile Users

Services are charged on a monthly basis. The first month of service will begin on the first day of the go-live month. Customer is required to pay a monthly recurring charge for each Registered Mobile User on the BlackBerry enterprise server at the beginning of each calendar month during the Service Period. The Services include all applicable Research in Motion Limited (RIM) BES Software license fees.

During the Service Period, when new Registered Mobile Users are added during a month, there will be no monthly recurring charge for those Registered Mobile Users added during the month. The monthly recurring charge for those Registered Mobile Users will begin the following month.

During the Service Period, when Registered Mobile Users are removed from service during a month, there will be a monthly recurring charge for those Registered Mobile Users for the month in which they are removed.

Please note: Charges based upon the number of Registered Mobile Users can never drop below the minimum level of 300 Registered Mobile Users.

Instant Messaging (IM) Monthly Recurring Charge

Customer is required to pay an IM monthly recurring charge for each Mobile User that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Real Time Cost Management (RTCM) Monthly Recurring Charge

Customer is required to pay a RTCM monthly recurring charge for each Mobile User that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Dynamic Application Management (DAM) Monthly Recurring Charge

Customer is required to pay a DAM monthly recurring charge for each Mobile User that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Incremental Mobile User Activation Charge

Customer is required to pay a one-time charge per each new Mobile User activation which occurs during Phase 3 – Steady State Operations.

Other Expenses

Charges for actual travel and living expenses and any miscellaneous expenses necessary for IBM to perform the Services are due as incurred. IBM will invoice you for such expenses monthly in arrears. Travel charges will be billed in accordance with the Federal Travel Regulations.

4) Invoices

Customer will be invoiced at the end of each month for the above charges that became due or began in that month. Payment is due in accordance with the Prompt Payment Act.

5) Termination for Convenience

Customer may terminate this Service by giving the other not less than sixty (60) days written notice. Upon such termination, you will pay IBM for (i) all Services IBM provides you through termination; and (ii) other reasonable charges that may be incurred from such termination.

6) Warranty For IBM Services

For each IBM Service, IBM warrants that it will be performed:

A. using reasonable care and skill; and

B. according to a mutually agreeable Statement of Work or its current description, including any completion criteria.

Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies is place of these Machine warranties.

The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs (IBM Programs licensed under a separate IBM license agreement, e.g., IBM International Program Licensing Agreement) and Non-IBM Programs (Programs licensed under a separate third party License agreement) may be found in their license agreements.

7) Materials Ownership And License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this item.

Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either IBM or the Government, or jointly, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either the Government or IBM.

2. IBM'S SOFTWARE AS A SERVICE OFFERING (SAAS)

2.1. OVERVIEW OF SAAS OFFERINGS

2.1.1 LOTUSLIVE

IBM's commercial offering. LotusLive offers professional grade e-mail, networking and collaboration tools and online meetings. Customers can meet online, share files, chat, manage projects, network with potential clients and send and receive e-mail anywhere, anytime. LotusLive delivers collaboration solutions, all in a securely designed environment.

2.1.2 IBM'S SOCIAL BUSINESS CLOUD FOR GOVERNMENT

IBM's Government Software as a Service Offering is provided within four environments:

- Government Community Cloud
  - Multi-tenant private community cloud
  - Shared with other Federal Users
  - IBM owned and operated
  - FISMA moderate
- Government Private Cloud
  - Unique, physically or virtually separated private cloud for Federal agencies
  - NIPRnet connectivity
  - FISMA High, Secret cleared personnel
- Government Private Enclave
  - GOCO, DOD, US Navy Base w/connectivity to second secured site
  - Multiple security levels from sensitive, but unclassified to DOD classified
  - NIPRnet and SIPRnet connectivity; SCIF
  - FISMA High, Top Secret cleared personnel
- Government Public Cloud
  - Public Cloud for Government only customers

2.1.2.1 EMAIL AS A SERVICE

Capabilities include calendar management; collaboration through Instant Messaging and other Web 2.0 features; mobile device support; secure data stores of content; and eDiscovery to search content.

IBM will provide three discrete services as part of this offer:

a. eMail, which includes:

- 5GB mailbox
- calendaring and scheduling
- presence awareness and instant messaging
- access via the internet without use of a local client
- S/MIME 3 support
- spam and virus protection
- sender policy framework (SPF)
- active-sync device support, including windows mobile, iPad/iPhone and Android devices

b. Blackberry Mobile which includes:

- secure mail synchronization
- application push capabilities

c. Archiving which includes:

- immutable data store
- role-based records retention
- eDiscovery
- on demand query and audit logs
- on demand export
- litigation hold

2.1.2.2 OFFICE AUTOMATION

IBM's solution offers collaborative document authoring capabilities, internet website creation using blogs, wikis, and forums for discussion, web-conferencing, video chats and web-cam, VOIP capability, SMS transmission, Fax transmission and receipt.

2.1.2.3 ELECTRONIC RECORDS MANAGEMENT

The IBM solution offers Federal agencies both a comprehensive, enterprise-proved Records Management platform and the ability to expand to identify, classify, declare, store and manage content in a seamless, secure manner across the enterprise. Capabilities include, file plan administration, reporting capabilities, security, on demand processing and securing of files, SharePoint file collection, document import and eDiscovery support.

2.2 SAAS TERMS OF USE

Carefully read these IBM SaaS Terms of Use ("Terms of Use" or "ToU") before using the IBM SaaS and any associated Enabling Software. Customer may use the IBM SaaS and Enabling Software only if Customer first accepts these Terms of Use.

The Government accepts these terms and conditions by issuing a funded delivery order to IBM for the SasS offer.

These IBM SaaS Terms of Use ("Terms of Use") are for IBM SaaS offerings described in this Chapter.

Customer may use the IBM SaaS only during a valid Subscription Period.

2.2.1 DEFINITIONS

Capitalized terms not defined in these Terms of Use are defined in the IBM International Passport Advantage Agreement (see Appendix S)

2.2.2 GENERAL CHARGE TERMS

See IBM's Pricelist for applicable metrics and prices.

2.2.3 SET-UP

IBM offers migration services of the Government's mailboxes to the IBM Federal Cloud. The migration services will be priced per mailbox by number of users.

See IBM's pricelist for details.

2.2.4 OVERAGE CHARGES

During the IBM SaaS Subscription Period, the Government may increase or decrease the subscribed level of an IBM SaaS offering. IBM will provide monthly reporting of the funding allocation of the Government's delivery order. The Government is responsible for monitoring this report and the funding allocated on their current order and issue a modification whenever the result of increases and /or decreases in charges meet the allocated funding. Notwithstanding the requirement for a modification to increase funding, the Government remains responsible for paying invoices for monthly provisioning and usage.

2.2.5 REMOTE SERVICES (HUMAN BASED)

IBM offers services to assist the Government with all aspects of integration services and technical requirements. These services will be offered based on the labor rates available under SIN 132-51.

2.2.6 Account Creation and Access

When IBM SaaS Users register for an account ("Account"), IBM may provide the IBM SaaS User with an Account identification and password. Customer is responsible for ensuring that each IBM SaaS User manages and keeps their Account information current. At any time Customer may request that any Personal Data provided as part of registering for an Account or use of the IBM SaaS be corrected or removed from Account information and this information will be corrected or removed, but removal may prevent access to the IBM SaaS.

Customer is responsible for ensuring that each IBM SaaS User protects their Account identification and password and controls who may access an IBM SaaS User Account or use any IBM SaaS on Customer's behalf.

2.2.7 Enabling Software

This IBM SaaS offering may include Enabling Software provided by IBM or a third party supplier. If Government Customer downloads or installs any Enabling Software, Government Customer agrees not to use such Enabling Software for any purpose other than to facilitate or enable Government Customer's access and use of the IBM SaaS. If Enabling Software is presented with a separate license agreement (for example, the IBM International License Agreement for Non-Warranted Programs ("ILAN") or other IBM or third party license agreement) at the time of installation or download, such separate agreement will govern its use. Government Customer agrees that Government Customer accepts such terms by accepting this ToU or downloading, installing, or using the Enabling Software.

2.2.8 Suspension of IBM SaaS and Cancellation

Suspension

In the event of a breach of the Terms of Use, Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the offending IBM SaaS User's Content, at any time. IBM will notify Customer of any suspension or revocation action.

Termination

The Government Customer may terminate the service at any time on one month's written notice. In such event, IBM will cease billing the monthly charge.

IBM may terminate Government Customer's access to the IBM SaaS for cause if Government Customer does not comply with the SaaS Terms of Use and such noncompliance is not remedied within a reasonable time after receiving notice from IBM. Upon termination, the Government Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event the Government Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within your possession or control.

Withdrawal

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice by letter or e-mail.

2.2.9 Renewal of a Subscription Period

Should the Government Customer wish to renew this service for a subsequent service period, a funded delivery order is required by the end of the current service period to avoid termination of service.

2.2.10 Emergency Maintenance & Scheduled Maintenance

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur.

For IBM's commercially available LotusLive service (offering 2.1.1), IBM publishes its regularly scheduled maintenance on the LotusLive support page at https://www.lotuslive.com/support/. During such times the Service will not be available for use. IBM has no obligation under these Terms of Use to provide support or maintenance service in connection with the Software or Service ("Technical Support"). IBM may elect to provide you with Technical Support at its sole discretion. Any enhancements, updates and other materials provided by IBM as part of any such Technical Support are considered to be part of the Service or Software, as applicable, and therefore governed by these Terms of Use.

For IBM's Social Business Cloud for Government offerings (offerings described under 2.1.2), IBM will provide the Government Customer a copy of our documented maintenance policies. Standard maintenance windows include the second and fourth Saturdays of each month, 8am EST – 2pm EST. In the event of an unscheduled maintenance is required, IBM will provide 72 hour notice to coordinate the activity. In the event emergency maintenance is required, IBM will provide as much lead time as possible to minimize impact to the Government.

2.2.11 Updates; Applicable Terms and Authorization for Auto Updates

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates. Government Customer authorizes IBM to, and agrees that IBM may, in accordance with IBM's standard operating procedures, automatically transmit, access, install, and otherwise provide Updates to IBM SaaS without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

2.2.12 Technical Support

Technical Support that IBM may provide will be identified on an IBM website or via a separate document.

2.2.13 Data Privacy and Data Security

In relation to all Personal Data provided by or through Customer to IBM, Government Customer will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. Government Customer agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content and using the Enabling Software and IBM SaaS. Government Customer confirms that Government Customer is solely responsible for any Personal Data that may be contained in Content, including any information which any IBM SaaS User shares with third parties on Government Customer's behalf. Government Customer is solely responsible for determining the purposes and means of processing Government Customer Personal Data by IBM under this Agreement, including that such processing according to Customer's instructions will not place IBM in breach of applicable data protection laws. Prior to processing, Government Customer will inform IBM about any special categories of data contained within Government Customer Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions. Government Customer is responsible for ensuring that the IBM SaaS meets such restrictions or special requirements. IBM agrees to process any Personal Data that meets the requirements set forth in this Section according to these Terms of Use.

2.2.14 IBM's Obligations

IBM will only process Government Customer Personal Data in a manner that is reasonably necessary to provide SaaS and only for that purpose. IBM will only process Government Customer Personal Data in delivering IBM SaaS. IBM will use its reasonable endeavors to apply any security measures set forth in this TOU, and Government Customer has determined that any such measures provide an appropriate level of protection. On PPA or TOU termination or expiry, IBM will destroy or return to Customer all Customer Personal Data. If Government Customer or a Government Customer Data Controller is required by applicable data protection laws to provide information about or access to Government Customer Personal Data to an individual or to the relevant authority, IBM will reasonably cooperate with Government Customer in providing such information or access.

2.2.15 International Transfers

Government Customer agrees that when IBM reasonably determines it is useful in its provision of IBM SaaS, IBM may transfer Content, including Personal Data, across a country border to the entities and countries notified to Government Customer. Such transfer may be made to a country outside the European Economic Area, or to a country that has not been declared by the European Commission to provide an adequate level of data protection. Government Customer consents to the IBM SaaS being provided by these entities in these countries, and is solely responsible for determining that any transfer of Personal Data across a country border under the terms of the Agreement complies with applicable data protection laws. IBM shall reasonably cooperate with Government Customer, for Government Customer's own benefit or for the benefit of a

Government Customer Data Controller, in its fulfillment of any legal requirement, including obtaining mandatory approvals.

2.2.16 Compliance with Applicable Export Law

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Government Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Government Customer acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS. Government Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

2.2.17 Copyright Infringement

It is IBM's policy to respect the intellectual property rights of others. To report the infringement of copyrighted material, please visit the Digital Millennium Copyright Act Notices Page at http://www.ibm.com/legal/us/en/dmca.html.

2.2.18 Warranty and Exclusions

Limited Warranty

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE IBM SaaS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

Items Not Covered by Warranty

IBM does not warrant uninterrupted, secure, or error-free operation of IBM SaaS or that IBM will able to prevent third party disruptions of IBM SaaS or that IBM will correct all defects.

Government Customer is responsible for the results obtained from the use of the IBM SaaS.

2.2.19 Miscellaneous SaaS Terms

2.2.19.1

In connection with Customer's use of the IBM SaaS, Government Customer acknowledges and agrees that: (i) IBM SaaS User names, titles, company names and photographs may be posted by

an IBM SaaS User as part of a profile ("Profile") and that the Profile can be viewed by other IBM SaaS Users, and (ii) at any time Government Customer may request that an IBM SaaS User Profile be corrected or removed from the IBM SaaS and such Profile will be corrected or removed, but removal may prevent access to the IBM SaaS.

2.2.19.2

If Government Customer or an IBM SaaS User transmits Content to a third party website or other service that is linked to or made accessible by the IBM SaaS, Government Customer and the IBM User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Government Customer and the third party website or service. IBM makes no warrantees or representations about such third party sites or services, and shall have no liability for such third party sites or services.

2.2.20 General

If any provision of these Terms of Use is held to be invalid or unenforceable, the remaining provisions of these Terms of Use remain in full force and effect. Failure by either party to insist on strict performance or to exercise a right when entitled does not prevent either party from doing so at a later time, either in relation to that default or any subsequent one. Any terms of these Terms of Use that by their nature extend beyond termination of these Terms of Use or the applicable Subscription Period remain in effect until fulfilled, and apply to respective successors and assignees.

2.2.21 Entire Agreement

The complete agreement between the parties, replacing any prior oral or written communications between Government Customer and IBM, consists of these Terms of Use, and the IBM International Passport Advantage terms (see Appendix S). If there is a conflict among the terms of these Terms of Use and IBM's Software as a Services and IBM Passport Advantage terms, then these Terms of Use prevail.

Additional or different terms in any written communication from Government Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as mutually agreed to by IBM and the Government.

2.3 Offering Unique Terms and Conditions

2.3.1 LotusLive

2.3.1.1 Inviting users to participate in LotusLive

The Government Customer that has purchased the SaaS Service may share documents with, or otherwise invite, individuals or entities, to participate in LotusLive for the purpose of

collaboration ("Permitted Invitees"). Permitted Invitees may have access to certain aspects of the Service and must agree to these Terms of Use. For Permitted Invitees, IBM may revoke access to the Service for any reason in its sole discretion.

2.3.1.2 Restricted Use for LotusLive Enterprise Deployment and LotusLive for Lotus Customers with Active Support and Subscription

If the Government has acquired a Proof of Entitlement for LotusLive Engage for Enterprise Deployment, LotusLive Engage for Lotus Customers with Active Support and Subscription, LotusLive Meetings for Enterprise Deployment, or LotusLive Meetings for Lotus Customers with Active Support and Subscription, then you may have up to 200 attendees on a LotusLive Web meeting. Only individuals within the Government Enterprise that have a current subscription and Proof of Entitlement to any LotusLive Service, excluding LotusLive iNotes, may utilize the functions of LotusLive Engage for Enterprise Deployment, LotusLive Meetings for Enterprise Deployment, LotusLive Engage for Lotus Customers with Active Support and Subscription, or LotusLive Meetings for Lotus Customers with Active Support and Subscription. This restriction shall not affect Permitted Invitees who are not employees of your Enterprise.

2.3.1.3 Restricted Use for LotusLive iNotes

LotusLive iNotes mailboxes may only be created for the SaaS Users on a one to one basis. The Government may delete and create new mailboxes as long as the total number of mailboxes at any given time does not exceed the number of Authorized Users specified on your Proof of Entitlement.

2.3.1.4 LotusLive Notes Use Requirements

A Proof of Entitlement (PoE) for "IBM LotusLive Notes," which includes a Fixed Term License (FTL) for the IBM LotusLive Notes Client Download sufficient to cover all requested Authorized Users for the Service. The Software is licensed on a FTL basis and may be used only in connection with the Service. The duration of the FTL is coterminous with the Service.

2.3.2 IBM's Social Business Cloud for Government, Email as a Service

2.3.2.1 Notice Regarding Spam, Content Blocking and Filtering

IBM administrators monitor the Service, investigate spam attacks and apply proprietary as well as industry standard technology measures in order to block or filter messages that appear to be unsolicited and bulk, and/or malicious in nature. IBM reserves the right (but shall have no obligation) to block electronic communications from other entities on the Internet. You should be aware that such blocking or filtering may take place if deemed necessary by IBM. IBM reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content.

2.3.3 IBM'S SOCIAL BUSINESS CLOUD FOR GOVERNMENT, OFFICE AUTOMATION

2.3.3.1 INVITING USER PARTICIPATION

The Government Customer that has purchased the SaaS Service may share documents with, or otherwise invite, individuals or entities, to participate in meetings and other social business tools for the purpose of collaboration ("Permitted Invitees"). Permitted Invitees may have access to certain aspects of the Service and must agree to these Terms of Use.

2.3.3.2 RESTRICTED USE FOR COLLABORATION TOOLS

If the Government has acquired a Proof of Entitlement for the social business cloud collaboration tools, then you may have up to 200 attendees on a Web meeting. Only individuals within the Government Enterprise that have a current subscription and Proof of Entitlement to any the SaaS Collaboration Services may utilize the functions of Web meetings. This restriction shall not affect Permitted Invitees who are not employees of your Enterprise.

2.3.4 RESTRICTED USE FOR IBM HOSTED BLACKBERRY SERVICES

The following terms apply when you and your Users access and use Hosted Blackberry Services. ("BES Services").

1. Use of Research In Motion Limited Software

Use of any software (including any upgrades or updates) that is required by Research In Motion Limited (or any of its affiliates) ("RIM") to enable the use of the BES Services ("RIM Software") is subject to the terms and conditions of the license agreement(s) that govern such RIM Software. In order to provide the BES Services, IBM may be required to install or use certain RIM Software on your behalf. You authorize IBM to use such RIM Software on your behalf for the sole purpose of providing the BES Services to you.

In providing the BES Services, IBM will install the BES Software on your behalf. The BES Software is subject to the terms and conditions of RIM's BlackBerry Software License Agreement ("BlackBerry License"). Your acceptance of the BlackBerry License is a prerequisite to IBM's ability to provide you with the BES Services. You agree to log into the RIM-approved website that IBM provides to you and register your acceptance of the BlackBerry License. IBM may commence the BES Services once you have accepted the BlackBerry License.

The BlackBerry License is a separate agreement between you and RIM. You acknowledge that use of the BlackBerry solution is for your internal business purposes and that RIM may terminate the BlackBerry License in accordance with its provisions. In the event of a termination of the BlackBerry License, IBM will be required to cease providing the BES Services, and IBM will not be liable to you for any damages arising out of such discontinuation of the BES Services. RIM has no responsibility to you for any terms, conditions, representations and warranties related to the BES Services or to any IBM products that may be provided with the BES Services. RIM reserves the right, as a third party beneficiary, to enforce the acknowledgements included in this paragraph.

2. Third Party Service Interruptions

The BES Services requires third party services that are separate and distinct from the services being provided by IBM. Such services include, for example, airtime services from an airtime service provider (e.g. voice and data plans from an airtime carrier) and the availability of RIM's Network Operation Centers ("NOCs"), which generally act as intermediaries between corporate mail servers and end users. IBM's ability to provide the BES Services may be impacted if, for example, if the NOCs are unavailable or fail to operate, or if your airtime service is temporarily interrupted or suspended. IBM is not responsible for any such interruptions and shall have no liability to you for such third party service interruptions. IBM is only responsible for providing the BES Services and to the extent a third party service interruption impacts IBM's ability to provide the BES Services, IBM will have no liability to you in such circumstances.

3. General

a. You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns and contractors) to access information about your Users as necessary for the purpose of providing the BES Services, including the name, email address, phone number, BlackBerry device pin number, IMEI number, and phone logs of Users.

2.4 Acceptable Internet Use Policy for IBM Services

This Acceptable Use Policy ("Policy") outlines unacceptable use of IBM services which interact with, or access, the Internet (the "Services"). This Policy is in addition to any other terms and conditions under which IBM provides the Services to you.

IBM may make reasonable modifications to this Policy from time to time by posting a new version of this document on the IBM Web site at http://www.ibm.com/services/aup.html (or any successor URL(s)). Revisions are effective immediately upon posting. Accordingly, we recommend that you visit the IBM Web site regularly to ensure that your activities conform to the most recent version.

Questions about this Policy (e.g., whether any contemplated use is permitted) and reports of violations of this Policy should be directed to aup@us.ibm.com.

The examples listed in this Policy are not exhaustive. Prohibited uses and activities include, without limitation, any use of the Services in a manner that, in IBM's reasonable judgment, involves, facilitates, or attempts any of the following:

a. violating any law of, or committing conduct that is tortuous or unlawful in, any applicable jurisdiction;

b. gambling activities;

c. displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;

d. advocating or encouraging violence against any government, organization, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;

e. accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content

   (1) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right,

   (2) in violation of any applicable agreement, or

   (3) without authorization;

f. deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;

g. obtaining unauthorized access to any system, network, service, or account;

h. interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;

i. introducing or activating any viruses, worms, harmful code and/or Trojan horses;

j. sending or posting unsolicited messages or e-mail, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;

k. evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;

l. propagating chain letters or pyramid schemes, whether or not the recipient wishes to receive such mailings;

m. holding IBM, its Affiliates, officers, employees and/or shareholders up to public scorn or ridicule; and/or

n. reselling IBM's services, in whole or in part, to any entity or individual, without IBM's prior written consent, or misrepresenting your relationship with IBM.

3. IBM'S FEDERAL COMMUNITY CLOUD OFFERING

The following terms and conditions apply to IBM's Federal Community Cloud Offering. A Statement of Work detailing our services will be provided on a transaction basis to the Government agency.

3.1 GENERAL

3.1.1 – GENERAL TERMS

The IBM Federal Community Cloud offering is an Infrastructure as a Service (IaaS) offering that is a private multi-tenant cloud specific for Federal Government users.

The Federal Community Cloud terms and conditions are incorporated into this IBM GSA IT Schedule Contract, herein after referred to as the "Agreement", and govern the Customer's access to and use of the Federal Community Cloud and associated Cloud services ("Services") that Customer orders and IBM provides from IBM's Federal Community Cloud.

Agreement Structure and Overview:

This "Agreement" incorporates each of the following Attachments and the Acceptable Use Policy:

a. "Attachments" means the following Attachments which provide additional terms and details for each of the Services:

   - IBM's Federal Community Cloud (FCC) Services Description – describes the Services available from IBM's Federal Community Cloud, or as may be described within a specific Statement of Work provided with an IBM proposal;
   - Services Charges Schedule – describes the charges applicable to each Services offering, or as may be described within a specific IBM proposal

b. The Acceptable Use Policy for IBM Services is also part of this Agreement and can be found at www.ibm.com/services/e-business/aup.html or any successor urls.

In the event of a conflict, the terms of Attachments prevail over this Agreement, and the latest dated Attachment will prevail over an earlier version of an Attachment, except as may be expressly specified otherwise.

Throughout this Agreement, the term "Agreement" includes applicable Attachments and the Acceptable Use Policy. Attachments are part of this Agreement only for those Services to which they apply.

3.1.2 ON-LINE TERMS AND TRANSLATIONS

Attachments and other referenced documents, Acceptable Use Policy, information, and resources may be presented electronically, including on-line, within the Federal Community Cloud Web

Interface or other IBM Web sites identified by IBM. Printed copies of all such documents are available upon request. Customer affirms that it has reviewed the Acceptable Use Policy, all electronically-presented Attachments that are part of this Agreement, and other referenced documents.

3.2 DEFINITIONS

Account – the Customer account profile and usage information regarding the Services selected and enabled, including End User activities.

Account Administrator – a person(s) Customer assigns who has administrator access to the Federal Community Cloud Web Interface for managing End Users access to and overseeing the use of the Services for the Account, has the authority to act on Customer's behalf regarding the Services including ordering Services, enabling and disabling Services; and is responsible for communications with IBM and receiving communications from IBM by email or by monitoring postings to the Federal Community Cloud Web Interface.

Cloud Services Focal Point – the IBM contact point(s) as specified by IBM to which Customer directs communications relative to the Services.

Federal Community Cloud (FCC) Web Interface – an IBM Web site designed to enable Customer to use the Services.

Content – all data, software, solutions, and information, including, without limitation, any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, installed, uploaded, or transferred in connection with the Services by Customer or End Users. Content also includes information provided by Customer for Account management including End User id's and contact information.

Customer – the U.S. Federal Government Agency identified in the Customer information section of this Agreement and its End Users. The term Customer is a broad term and includes not only the reference to a U.S. Federal Government Agency but all the specific employees from that Agency involved in use of IBM's FCC (i.e., Account Administrator, End Users).

Enabling Software – any software (such as programs, enabling code, utilities, client software, and plug-ins) and documentation IBM provides to Customer to facilitate Customer's access to and use of the Services.

End User – those who access or use the Services using user account identification to access the Federal Cloud Services.

Federal Cloud Services – the cloud specific Infrastructure as a Service (IaaS) offerings that IBM provides to Federal agencies.

IBM Federal Data Center – the IBM managed facility where Services Components are located and delivered.

Instance – a virtual machine instance that IBM makes available to Customer as part of the Services. An Instance consists of virtual computer processing unit(s) i.e., virtual CPUs, virtual memory, virtual local storage and a selected Operating System.

Services Components – the hardware, software, images, tools, and any documentation (electronic or otherwise) IBM utilizes to provide the infrastructure and functionality of the Services and any images that IBM makes available to Customer as part of the Services.

3.3 SERVICES

Federal Community Cloud Services are provided on a private, multi tenant cloud infrastructure environment using Services Components located at an IBM Federal Data Center. IBM will provide selected Services as described in the applicable Attachments which include IBM and Customer responsibilities. IBM's ability to provide the Services is dependent upon Customer managing and performing of its responsibilities, at no charge to IBM. Customer is responsible for the use of the Services by End Users, including the actions of any End User and for ensuring that each End User complies with this Agreement, including Attachments, Acceptable Use Policy, and other referenced documents.

3.3.1 SERVICES ACCEPTANCE, RIGHTS, ACCESS, AND USE

IBM will provide Customer access to and use of the Services upon receipt of a fully funded order. Optional upgrades may be added to the baseline Instance offering. IBM will enable the upgrade upon receipt of a funded order or modification to the Government's existing order.

Customer's acceptance of the services is the date IBM provides the Customer with access to the IBM Federal Community Cloud Interface.

IBM or its suppliers retain all rights, title, and interest in the Services Components. Customer agrees to not i) use, copy, modify, make derivative works based upon, link to, or distribute any portion of the Services or Services Components except as expressly provided in this Agreement; or ii) reverse assemble, reverse compile, or otherwise translate any of the Services or Services Components except as specifically permitted by law without the possibility of contractual waiver.

Customer agrees to use the Services Components only as part of the Services. Customer agrees not to resell any Services or Services Components, in whole or in part, as part of a service Customer provides to others without IBM's prior written consent, and any attempt to do so is void.

3.3.2 THIRD PARTY SOFTWARE

Third party software, including open source software, may be provided as part of the Services. Any such third party software will be licensed in accordance with the applicable third party license agreement (Third Party Agreement) described in the Services Description Operating System Image section or otherwise provided to Customer and is for use only within the Services. The Third Party Agreement is an agreement between Customer and the third party only. IBM is not a party to any such Third Party Agreement. For such third party software and for third party software that IBM may use to provide the services, Customer receives no warranties, indemnities or express or implied patent or other license from IBM with respect to any third party software.

IBM's provision of Services hereunder does not constitute a distribution of the third party software by IBM.

3.3.3 Enabling Software

If Customer is permitted or required to download or install any Enabling Software, Customer agrees not to use such Enabling Software for any purpose other than to enable Customer's access and use of the Services. The Services Description may include terms applicable to Enabling Software. Some Enabling Software may be subject to a separate license agreement (for example, the IBM Program License Agreement (IPLA) or other IBM or third party license agreements). The terms of the IPLA are included in Chapter 5 of this GSA IT Schedule Contract. Customer agrees that Customer accepts such terms by issuing IBM a delivery order incorporating this Agreement, or downloading, installing, or using the Enabling Software.

3.4 Content

3.4.1 Ownership

Customer (or End Users, or Customer's third party suppliers) retain all right, title, and interest in Content. By any party using Customer's Account and adding, creating, installing, uploading, or transferring Content to use in conjunction with the Services, Customer grants IBM and its subcontractors a non-exclusive, worldwide, royalty-free, paid-up, transferable license and approval to host, cache, copy, and display Content for the purpose of and in conjunction with providing the Services. Customer represents that Customer has and will keep in effect during Customer's use of the Services, all such licenses and approvals necessary to grant IBM and its subcontractors these rights and that they will be provided at no charge to IBM. Customer is responsible for complying with the terms of any such license agreements including entitlements and permitted uses. Customer represents that by adding, creating, installing, uploading, or transferring Content for use in conjunction with the Services, Customer is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws.

Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

3.4.2 Content Responsibilities

Customer is responsible for all Content, including selection, creation, design, usage, licensing, maintenance, testing, backup, and support. Customer is also responsible for any individual's personal information or any information Customer considers confidential that is included in the Content. The Services may allow Customer to include within the Content personal information about others. The laws of some jurisdictions may require the consent of individuals prior to including their personal information in the Content or require compliance with laws, rules, and regulations (such as personal health information). Customer agrees to comply with all applicable

laws, to obtain all necessary consents, and make all necessary disclosures before including personal information in the Content and using the Services. Customer acknowledges that this Agreement and its Attachments describe the Services and available options Customer may order and that Services Customer orders meet Customer requirements, including requirements for Customer to meet its responsibility for processing any personal information.

The Customer confirms that Customer is solely responsible for any personal information that may be contained in the Content, including any information which Customer shares with third parties, and that Customer is and remains in compliance with applicable data protection laws. Customer acknowledges that IBM does not control the transfer of data over telecommunications facilities, including the Internet. IBM complies with National Institute of Standards (NIST) Special Publication (SP) 800-53 revision 3 based on an impact categorization of NIST Federal Information Processing Standards (FIPS) Publication 199 Moderate. IBM does not warrant secure operation of the Services or that IBM will be able to prevent third party disruptions of the Services. Customer agrees that IBM shall have no liability for any security-related services or advice that IBM may voluntarily provide.

IBM cannot commit to particular confidentiality obligations regarding any Content or Customer confidential information Customer uses in connection with the Services. IBM assumes no confidentiality obligations regarding Content, regardless of the terms in the Agreement or any separate confidentiality agreement between Customer and IBM.

Customer will have sole root access to Customer's Instances and is responsible for managing Content and access to Content. IBM does not have access to Customer's Instances nor to directly disclose Content except i) when Customer expressly authorizes IBM to do so in connection with use of Services; ii) as necessary to provide Services; or iii) to the extent required by law or as necessary to comply with the request of a governmental or regulatory body or order from a court of competent jurisdiction. To the extent that IBM is reasonably able, IBM will try to provide notice to Customer to enable Customer opportunity to obtain a protective order to prevent such legally required disclosures.

Customer agrees that IBM has no responsibility for Content, including if Content is modified or lost. Customer acknowledges that Customer has reviewed the security features and responsibilities as described in the Services Description and determined that they meet Customer's security needs. Customer is solely responsible for determining the appropriate procedures and controls regarding security of Customer's Instances (such as encryption, monitoring or scanning, and backup of all Content) and for the implementation of any such procedures and controls.

3.5 Charges & Payment

3.5.1 Charges

IBM's FCC pricing is published on IBM's GSA website www.ibm.com/easyaccess/gsa, under Special Item 132-52, Electronic Commerce Services. Specified charges for Services are offered on a monthly subscription basis.

Commitments and options selected by Customer will affect the total charges IBM will invoice. IBM's invoices will be based upon the following:

a. Charges are fixed price monthly charges ("MRC") are for a full month usage per virtual machine Instance and selected options, IBM does not provide partial month billing. IBM will invoice the Customer at the end of each month.

b. Any applicable non-recurring charges ("NRC") will be billed when such Services are ordered.

3.5.2 Payment

Amounts are due upon receipt of invoice in accordance with the Prompt Payment Act. IBM does not give credits or refunds for any charges already due or paid.

3.6 Changes

3.6.1 Agreement and Services Changes

IBM may from time to time add new Services or options, or in its reasonable discretion, change Agreement terms or withdraw existing Services or options, in whole or in part. IBM will notify Customer of any such new or changed Services, terms or Services withdrawals and the effective date of such by providing notice directly to Account Administrator using current information in Customer's Account control page. For any withdrawal of Services or for any change in Agreement terms that affects existing Services, IBM will provide at least one months' notice prior to the effective date of a change. Changes will be effective upon the effective date specified in the notice, unless otherwise specified in an Attachment (for example for automatic renewal Services).

3.6.2 Acceptance of Service or IBM Policy Changes

Customer may elect to discontinue use of Services or not renew Services affected by a change. If Customer does not accept a change, Customer is responsible to discontinue use of affected Services prior to the effective date of the change by providing IBM with written notice.

3.6.3 Changes to IBM On-line Policies

Changes to IBM's Acceptable Use Policy will be made by posting a new version at the applicable Web site. Customer agrees to periodically review the Web sites for changes to the Acceptable Use Policy.

Customer agrees and accepts any modified terms by continuing to use the Services after the changes are posted and effective. A change will take effect upon the effective date specified in such notice or posting.

3.7 Warranties and Disclaimers

IBM warrants that it provides the Services using reasonable care and skill and according to the current description in the Agreement.

3.7.1 Items Not Covered by Warranty

IBM DOES NOT WARRANT UNINTERRUPTED, SECURE, OR ERROR-FREE OPERATION OF THE SERVICES, SERVICES COMPONENTS, THIRD PARTY SOFTWARE, OR ENABLING SOFTWARE OR THAT IBM WILL BE ABLE TO PREVENT THIRD PARTY DISRUPTIONS OF THE SERVICES OR THAT IBM WILL CORRECT ALL DEFECTS. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SERVICES, SERVICES COMPONENTS, OR ENABLING SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 7 ALSO APPLY TO ANY OF IBM'S PROGRAM DEVELOPERS AND SUPPLIERS.

3.8 Term, Termination and Suspension

The term of this Agreement is effective upon the day IBM receives a fully funded order, or as otherwise specified in the delivery order. IBM will automatically terminate the service on the term expiration date as specified in the delivery order unless IBM receives a modification or a new funded delivery order prior to the expiration date.

Customer understands that when a Service is terminated all Customer Content will be lost unless it has been previously backed up by the Customer outside the Federal Cloud environment. Customer is responsible for managing and implementing backup of all Customer Content.

3.8.1 Customer Termination and Closing Account

Customer may terminate the Service or any of the optional upgrades by providing IBM written notice. The effective date of termination will be the first of the month following IBM's receipt of the Government's written notice. Upon such termination request, IBM will disable the specific Service upgrade or close Customer's Account. Customer agrees to discontinue access and use of the Service. Customer remains responsible for the full monthly charge through the effective date of termination.

3.8.2 Suspension or Termination of the Services by IBM

IBM may suspend Customer's access to Services, in whole or in part or any option, or prevent access to any new Services if: (i) in IBM's sole discretion there is an emergency situation,

including but not limited to breach of security; (ii) continued provision of Services, in whole or in part or Customer's use of Services in whole or in part may cause IBM to violate any law, rule, regulation, governmental policy, or court order; (iii) use of Services in whole or in part, is inconsistent with a contractual commitment or intellectual property right of a third party; (iv) Customer materially violates the terms of this Agreement; or (v) there is a violation of the Acceptable Use Policy.

IBM will provide Customer written notice of a suspension and the reason for such and if the cause of the suspension is reasonably capable of being remedied, IBM will inform Customer of what actions Customer must take to reinstate the Services or Customer's eligibility to request new Services. If Customer fails to take such actions within a reasonable time, IBM may terminate suspended Services or the Agreement upon written notice.

Charges will continue to accrue for Services provided during any such suspension and Customer is responsible for paying all charges due and payable up to the date of termination including applicable termination charges.

3.8.3 Suspected Violations

IBM reserves the right to investigate complaints relating to use of the Services by Customer, Customer End Users, or someone using Customer's Account, or any potential violation of the terms of this Agreement (including but not limited to the Acceptable Use Policy, image terms or other separate license agreement). Notwithstanding any other terms, policies, or other rights available, IBM may take any action it deems appropriate, including without limitation, disclosing information to enforcement agencies. In addition to any other remedies available to it, IBM reserves the right to:

a. suspend or restrict Customer's access to or terminate any of the Services, as described above;

b. remove or require the removal of offending Content; or

c. exercise other rights and remedies available at law or in equity.

Except for an emergency or as may otherwise be required by law, before undertaking the remedies described in this section or 7.2 (Suspension or Termination of Services by IBM), IBM will attempt to notify the Account Administrator by email or any reasonable practical means under the circumstances.

3.8.4 Survival

Any terms of this Agreement that by their nature extend beyond the termination of Services remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

3.9 General Principles of Our Relationship

3.9.1 Notices

IBM will provide any notice required or permitted under this Agreement to the Account Administrator. Unless stated otherwise in this Agreement, notices are effective upon the date they are emailed. Customer is responsible to have the Account Administrator review any notices or other information posted to it regarding Customer's Account.

Notices required or permitted under this Agreement by Customer are to be provided to the Cloud Services Focal Point. Subject to the foregoing, Customer and IBM consent to the use of electronic means, email, and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing.

Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology services. 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 Services hereunder.

Regardless of where Customer or End Users are located when accessing the Services, Customer agrees to comply with all applicable export and import laws and regulations. Customer represents that no Content accessible to IBM for the Services will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

Customer is also responsible for complying with all other laws, rules, and regulations that may be applicable to Customer's use of the Services.

3.9.2 Other Principles of Our Relationship

a. Neither party grants the other the right to use its trademarks, trade names, or other designations in any promotion, publication, or Web site without prior written consent or as expressly provided in this Agreement.

b. IBM may use information regarding Customer's usage of Services for internal purposes.

c. Customer is responsible for selecting Services that meet Customer's needs and the results obtained from Customer's use of the Services.

d. Neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) total charges for the Services or ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.

APPENDIX A TABLE OF CONTENTS

APPENDIX A. OVERSEAS INFORMATION 1

TERMS AND CONDITIONS 1
A.1 TRANSPORTATION 1
A.2 SPECIAL EQUIPMENT 1
A.3 PERSONNEL 2
A.4 TRAVEL OF IBM PERSONNEL 2
A.5 COMMUNICATIONS FACILITIES 2
A.6 SERVICE LOCATIONS 3
A.7 LOGISTICS SUPPORT 3
A.8 TRANSSHIPMENTS (D-FAS-477) (APR 1984) 4
A.9 FOREIGN TAXES AND DUTIES (I-FCI-314) (MAY 2003) 4

APPENDIX A. OVERSEAS INFORMATION

TERMS AND CONDITIONS

On a case-by-case basis, IBM will deliver products to and perform services at overseas US Government locations which are in support of national or mutual defense operations (including US Embassies), and to locations which support the national interest of the United States. In these cases, the terms and conditions of Special Items 132-8, 132-12, 132-33, 132-51, and 132-62 will apply with the following modifications.

A.1 TRANSPORTATION

A. Shipment of products to the domestic point of embarkation shall be provided by IBM at no additional charge. The cost of transportation outside the United States shall be paid for by the Government. The Government is responsible for shipments from the point of embarkation to the overseas destination. Should the Government request that IBM arrange for transportation outside the United States, such transportation will be outside the scope of this contract. Shipment shall be made by ocean freight or padded van or IBM may, at its option, use a premium method of transportation (e.g., air freight), but the Government shall only pay the difference between the standard rate and the cost of the premium method used. Transportation billing for such shipments will be made by IBM to the Government with appropriate supporting paid freight bills. The Government may provide transportation for equipment, tools, and test equipment, in accordance with applicable Government regulations. The Government shall provide Government transportation to and from the installation site and the domestic points of embarkation and debarkation for all shipment involved in a mechanical replacement of equipment in a foreign country, and IBM shall reimburse the Government for such transportation in accordance with applicable Government regulations.

B. Customs Clearance - The Traffic Management Officer (TMO), Transportation Officer (TO) or other appropriate US Government authority at the first destination delivery point shall be responsible for processing appropriate customs documents, and for the performance of clearance procedures for all products and for repair parts required to perform maintenance and warranty service, as may be ordered under this contract.

A.2 SPECIAL EQUIPMENT

IBM, at its option may, accept orders for equipment designed to operate on 50 cycle current for use outside of the United States. Before placing an order for 50 cycle equipment, ordering offices should contact IBM to ensure that sure equipment is available. Such equipment may be manufactured outside the United States by any of IBM's Global organization and/or its affiliates, subsidiaries or subcontractors and will be furnished to the Government at the prices listed in the Price List. IBM will notify the Government of the shipping point and the country of origin of the equipment prior to the time an order is accepted.

A.3 PERSONNEL

A. Service or assistance may be provided, at the option of IBM, by personnel of any of IBM's Global organizations and its affiliates, subsidiaries or subcontractors in a manner consistent with that which is normally provided to their own customers.

B. Whenever the Government requires that service be performed by a person with a security clearance, the Government shall state that requirement in each order submitted. IBM may accept, at its option, such an order by written notice to the Government within sixty (60) days of receipt. Acceptance by IBM shall also be contingent upon the Government's providing logistics support, as set forth in Paragraph (c) below, in those locations for which cleared personnel are requested.

C. IBM's fulfillment of its obligation to provide service in locations outside the US is dependent upon many local factors, including logistics support provided by the Government to IBM employees and their dependents (see the Item below entitled Logistics Support). In the event the level of logistics support considered essential IBM for the continued performance of its personnel under this Contract is not provided by the Government, IBM shall not be obligated to perform under this Contract.

A.4 TRAVEL OF IBM PERSONNEL

In addition to any other provisions of Special Items 132-8, 132-12, 132-33, 132-51,and 132-62 all travel expenses of IBM personnel associated with providing services at overseas locations may be billable. When appropriate, travel and wait time (in excess of one hour), shall be billable at the applicable per call rate set forth in Appendix B. Travel expenses shall include, but not be limited to, commercial carrier charges, tools, and privately-owned vehicle mileage at a rate not to exceed $.375 per mile, in accordance with the federal travel regulations or the joint travel regulations, as applicable.

The Government shall have the option to either furnish Government transportation, meals and lodging (if applicable) at not charge to IBM or pay IBM's reasonable costs for non-Government transportation, meals and lodging. In either event, the Government shall pay for all billable travel and waiting time (other than time involved in excusable delays) from and to the IBM personnel's point of departure, as determined by IBM. Such transportation, meals, lodging and any other support provided by the Government shall be equivalent to Government per diem rates, in accordance with the federal travel regulations or the joint travel regulations, as applicable.

A.5 COMMUNICATIONS FACILITIES

The Government shall have the option to either provide IBM personnel, at no charge, access to the Government communications facilities, such as telephone, etc., for the purpose of securing technical assistance, such as ordering maintenance parts, or reimburse IBM for such charges if commercial communication facilities must be utilized.

A.6 Service Locations

In any location which IBM deems to be hazardous, IBM reserves the right, depending upon the nature and extent of the hazard, either to withdraw service from the location or to levy additional charges on an individual installation basis and outside of this Contract.

A.7 Logistics Support

For the purposes of this Contract, logistics support includes, but is not necessarily limited to the following items, comparable to the "A" Package support as defined in USAREUR Reg. 600-700, or other local requirements.

A. Government-provided telephones, lines and service and direct dialing capability. The precedence of usage shall be coincident with the urgency of the requirement and the usage in accordance with Government requirements.

B. Postal Services which will provide the IBM Corporation and its employees with the privilege of receipt and dispatch of letter mail, parcel post, exposed film, voice recording/tapes, and the purchase of U.S. Postage.

C. The availability of Post and Base Exchange, dispensary services, commissary, open mess, recreational facilities, dependent schools on military bases, and other privileges to IBM employees to the same extent as is provided to any military personnel and/or U.S. Government civilian employees of equivalent job responsibility.

D. The provision of banking and check cashing privileges for the IBM Corporation and, if available, for IBM employees within the constraints established by Government Directives.

E. Billing, meals, and transportation for IBM maintenance, technical, and management personnel when traveling in remote areas or areas under military jurisdiction in performance of IBM's contractual obligations.

F. Gasoline, oil and maintenance for IBM vehicles when in use in remote areas or areas under military jurisdiction in performance of IBM's contractual obligations.

G. Adequate IBM office facilities and office support services where mutually deemed necessary by the Government and IBM.

H. Military protection of performance and IBM assets wherever threatened by overt hostility.

I. Other logistics support as agreed upon mutually by the Government and IBM and as the occasion and environment demand.

J. If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM’s net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in an invoice or supply exemption documentation. The Government is responsible for any personal property taxes for each Product from the date IBM ships it to you.

A.8 TRANSSHIPMENTS (D-FAS-477) (APR 1984)

Machines shipped under this contract shall be packaged and marked in accordance with IBM's standard commercial practices. IBM follows the Department of Transportation requirements for packaging and shipping products overseas. This includes labels and standard information such as weight, location, number of pieces as well as a DOT HAZMAT certification form. Should the end-user agency require the Military Shipment Labels (DD Form 1387), IBM will make every effort to comply.

A.9 FOREIGN TAXES AND DUTIES (I-FCI-314) (MAY 2003)

For shipments outside the continental U.S., IBM will ship FOB Destination to the domestic point of embarkation. All charges and Government costs associated with transportation outside the United States shall be borne by the Government. Should the Government request that IBM arrange for transportation outside the United States, such transportation will be outside the scope of this contract.

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APPENDIX B TABLE OF CONTENTS

APPENDIX B. CUSTOMER ENGINEERING MAINTENANCE SERVICES/PER CALL CHARGES (SIN 132-12) 1

TABLE C1 PER-CALL MAINTENANCE COSTS DURING IBM'S NORMAL WORKING HOURS 1

APPENDIX B. CUSTOMER ENGINEERING MAINTENANCE SERVICES/PER CALL CHARGES (SIN 132-12)

TABLE C1 PER-CALL MAINTENANCE COSTS DURING IBM'S NORMAL WORKING HOURS

The following table shows the costs for per-call maintenance as well as for other maintenance services. The hourly rates and the 1/10 hourly rates shown in the table are the costs incurred during IBM's normal working hours.

Table C-1. Per-Call Maintenance Costs During IBM's Normal Working Hours. Note No. 1 at the end of this table details IBM's normal working hours.

Maintenance Class	Hourly Rate	1/10th Hourly Rate
Class 1[2]	$180.00	$18.00
Class 2[2]	$302.00	$30.20
Class 3[2]	$324.00	$32.40

Note:

1. IBM's normal working hours are 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).

IBM per-call maintenance is available outside normal business hours only in certain emergency situations, for example, Federal emergency, life-threatening situation. For service in these unique situations, call 1-800-IBM-SERV. The hourly service rates in these situations are as follow:

Class 1: $235.00

Class 2: $346.00

Class 3: $422.00

The rate is per hour (per person), plus charges for parts and travel. A two-hour minimum applies if access to IBM engineering information is required.

2. Per-Call Classes (1, 2, 3) are identified by machine type in the Price List.

Time for each call by a Customer Engineer will be computed to the nearest tenth of an hour. Travel time and expense, parking, tolls, and commercial carrier charges will be billed to the Government. In addition private vehicle mileage will be charged at a rate not to exceed $.375 per mile, in accordance with the federal travel regulations or the joint travel regulations, as applicable.

Service will be billed at the rate applicable to the period during which the service was performed.

APPENDIX C TABLE OF CONTENTS

APPENDIX C. INFORMATION TECHNOLOGY SERVICES CHARGES.....1

C.1 INFORMATION TECHNOLOGY PROFESSIONAL SERVICES.....1

C.1.1 Technical And Consulting Services Hourly Rates.....1
C.1.2 Skill Level Descriptions.....1
C.1.3 Conversion Support.....3
C.1.4 Database Planning And Design.....3
C.1.5 Data Records Management.....4
C.1.6 Information Technology Consulting.....4
C.1.7 Implementation Support.....4
C.1.8 Network Communications.....5
C.1.9 Programming.....5
C.1.10 Project Management.....6
C.1.11 Resources And Facilities Management.....6
C.1.12 Systems Analysis Design.....6
C.1.13 Systems Engineering.....7
C.1.14 Systems Installation.....7
C.1.15 Security.....8
C.1.16 Image System Support.....8
C.1.17 Independent Validation And Verification.....9
C.1.18 Software Test.....9
C.1.19 System Test.....9
C.1.20 Training.....10
C.1.21 Machine Movement.....10

C.2 HSPD-12 SERVICE RATES.....11

C.2.1 Skill Level Descriptions.....12

APPENDIX C. INFORMATION TECHNOLOGY SERVICES CHARGES

C.1 INFORMATION TECHNOLOGY PROFESSIONAL SERVICES

C.1.1 TECHNICAL AND CONSULTING SERVICES HOURLY RATES

Rates include .75% IFF

	GFY08	GFY09	GFY10	GFY11	GFY12
A'	$373	$382	$390	$402	$413
A	$304	$311	$318	$328	$336
B	$278	$284	$291	$300	$307
C	$253	$259	$265	$273	$280
D	$222	$227	$232	$239	$246
E	$195	$199	$204	$210	$216
F	$186	$190	$195	$200	$206
G	$172	$176	$180	$185	$190
H	$152	$155	$159	$164	$168
I	$123	$126	$129	$133	$136
J	$99	$101	$104	$107	$109
K	$66	$68	$69	$71	$73
L	$39	$40	$41	$42	$43

Subject to agreement by both the Government and IBM, IBM will provide support outside IBM's normal working hours. Under such circumstances, the rates identified above will be increased by 15%.

C.1.2 SKILL LEVEL DESCRIPTIONS

A Prime. Up to and possibly 25 years of experience of progressive accomplishment managing and implementing large, complex information technology systems with expertise in a specific discipline such as Enterprise Resource Planning, or Information Strategy. This individual may work in conjunction with a Center of Competency such as: Capacity Planning or they may work independently directly with senior customer executives as consultants.

A. Up to and possibly exceeding 25 years of experience of progressive accomplishment managing and implementing large, complex information technology systems. Experienced in

advising senior executives on effective utilization of information technology systems and reengineering to meet business objectives.

B. Up to 20 years of experience with large, complex systems, providing key leadership in a multi-vendor environment. Extensive experience with large systems modernization and business practice reengineering.

C. Up to 15 years of progressive accomplishment as experts in large and complex information technology systems implementation. Expertise is applied across multiple information technology platforms and the integration of diverse architectures.

D. Up to 12 years of significant accomplishment as an expert in large integrated systems. Experience with several ADP architectures and platforms in an integrated environment.

E. A deep understanding of architecture, techniques and management processes across a broad spectrum of systems, applications and requirements. This level of personnel generally has up to ten years of professional experience in specialized areas of large customer applications.

F. Generally regarded as an expert in their particular discipline or technology. This level of personnel generally has up to eight years of professional experience in their field of expertise.

G. Broad knowledge of the labor category field and a demonstrated ability to independently work on complex assignments. This level of personnel generally has up to five years of professional experience in the field of expertise.

H. Significant knowledge of the labor category field and the ability to work independently on typical assignments. This level of personnel generally has up to four years of professional experience in the field of expertise.

I. General knowledge of the labor category field and the ability to work with minimal supervision. Assistant personnel generally have up to three years of professional experience in the field of expertise.

J. Basic knowledge of the labor category field and the ability to work with some supervision. Specialists generally have up to two years of professional experience in their field of expertise.

K. Some knowledge of the labor category field and the ability to work with supervision. Specialists generally have up to one year of professional experience in their field of expertise.

L. Entry level IT knowledge, with the ability to provide Level 1 System and Software Support. Professionals have up to one year experience.

General Note:

Consultants at these skill levels provide managerial and technical leadership for development, implementation and operations of complex information technology systems implementation. They are recognized for their experience in providing expert guidance to senior executives.

IBM has identified below a series of service offerings performed under SIN 132-51. For each service, IBM has listed the title of the professionals to perform the service and the hourly rates for each.

The technical/experience level or systems expertise required for a particular task shall be determined by IBM in conjunction with the end user's requirements.

C.1.3 Conversion Support

Assesses the feasibility, cost and practicality of converting systems against developing new Software. Develops detailed conversion plans to define the conversion process, the size of conversion work packages, environmental considerations, system constraints, vendor extensions and schedule. Utilizes software conversion tools in conjunction with manual refinement to convert the system work packages.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available			
Senior Consultant IT Specialist	A Prime	A		
Certified IT Specialist	B			
Senior IT Specialist	C			
Advisory IT Specialist	D			
Senior Hardware/Software Conversion Specialist	E	F		
Staff Hardware/Software Conversion Specialist	G	H		
Associate Hardware/Software Conversion Specialist	I	J	K	L

C.1.4 Database Planning And Design

Provides technical expertise for the production of detailed database designs and design documentation, including data models, and data flow diagrams. Evaluates and configures DBMS products to match user requirements with system capabilities. Determines file organization, indexing methods, and security procedures for system databases. Plans coordinates conversion and migration of existing (or legacy) databases to state of the art DBMS's.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available			
Senior Consultant IT Specialist	A Prime	A		
Certified IT Specialist	B			
Senior IT Specialist	C			
Advisory IT Specialist	D			
Senior Database Management Specialist	E	F		
Staff Database Management Specialist	G	H		
Senior Database Administrator	E	F		
Staff Database Administrator	G	H		
Database Designer/Architect	A	B	C	D

C.1.5 DATA RECORDS MANAGEMENT

Provides services relating to the management of physical and/or electronic data. Establishes and maintains a data management facility to monitor, report on and maintain the status of documentation.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available			
Data Records Management Specialist	I	J	K	

C.1.6 INFORMATION TECHNOLOGY CONSULTING

Guides the assessment of IT System Objectives and concept of operations. Guides identification of top level system requirements. Prepares high level system architecture in terms of hardware, software, database and telecommunications components.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available			
Executive Consultant	A Prime	A		
Senior Consultant	B			
Consultant	C			
Associate Consultant	D			

C.1.7 IMPLEMENTATION SUPPORT

Provides assistance in all aspects of the development and implementation process. Assists in planning, organizing, directing, coordinating, and evaluating the work of personnel in charge of task orders and/or integrated product teams. Assists in developing management plans and preparing management/cost performance reports.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available			
Senior Program Office Support Specialist	E	F		
Staff Program Office Support Specialist	G	H		
Associate Program Office Specialist	I	J	K	L

C.1.8 Network Communications

Provides assistance in all aspects of network management from network design through implementation and the maintenance of upgrading existing networks. Analyzes, designs, specifies, documents, and implements communication system requirements to support the distributed functionality of a software engineering environment.

Position Title	Experience Levels Available						
Network Designer/Architect	A						
Senior Consultant IT Specialist	A						
Certified IT Specialist	B						
Senior IT Specialist	C						
Advisory IT Specialist	D						
Senior Networking Systems Programmer	E	F					
Staff Networking Systems Programmer	G	H					
Data Communications Specialist	F	G	H	I	J	K	L
LAN/WAN Specialist	F	G	H	I	J	K	L
Telecommunications Technician	I	J	K	L			

C.1.9 Programming

Codes, and tests software based upon software specifications and designs. Uses sound software engineering principles to ensure that developed code is modifiable efficient, reliable, understandable, and fault tolerant. Provides software process management and control throughout the coding portion of the software development process.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				
Senior Programmer/Analyst	G				
Junior Programmer/Analyst	I				
Journeyman Programmer/Analyst	J	K			
Senior Systems Programmer/Analyst	C	D	E	F	
Systems Programmer/Analyst	G	H	I		

C.1.10 PROJECT MANAGEMENT

Plans, coordinates, and manages all aspects of complex information technology projects. Prepares and presents status on project schedule, project costs, project deliverables, project risks, and risk containment strategies.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Project Executive	A Prime	A			
Senior Project Manager	B				
Project Manager	C	D	E	F	G
Task Leader	H	I	J	K	

C.1.11 RESOURCES AND FACILITIES MANAGEMENT

Plans, organizes, directs, coordinates and evaluates all tasks relating to the smooth operation of an ADP facility. Develops facility/resource management plans and prepares management/costs performance reports.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Facilities Manager	C	D	E	F	G

C.1.12 SYSTEMS ANALYSIS DESIGN

Analyzes users requirements, concept of operations documents, and high level system architecture to develop system requirements specifications. Develops detailed system Architecture and system design documentation. Guides system development and implementation planning through assessment or preparation of system engineering management plans and system integration and test plans. Develops system configuration documentation, including detailed designs for capacity planning, security systems and disaster recovery.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Systems Architect	A Prime	A			
Senior Programmer/Analyst	G				
Junior Programmer/Analyst	I				
Journeyman Programmer Analyst	J	K			
Senior Systems Programmer/Analyst	C	D	E	F	
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				

C.1.13 SYSTEMS ENGINEERING

Provides expertise in the areas of system architecture, system design, systems engineering techniques, and systems management processes. Analyzes and recommends commercially available hardware capable of meeting systems requirements.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				
Senior Systems Engineer	E	F			
Systems Engineer	G	H			

C.1.14 SYSTEMS INSTALLATION

Performs site surveys, installs, tests, and validates operational automation and communications equipment/software as specified by installation standards, manufacturer's guidance, and safety codes.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				
Senior Hardware/Software Installation Specialist	E	F	G		
Hardware/Software Installation Specialist	H	I	J	K	L

C.1.15 SECURITY

Formulates and assesses IT security policy to include business impact. Prepares security plans for employing an enterprise wide security architecture to include the design of cryptographic solutions. Develops integrated security services management. Executes security awareness training. Assesses and audits network penetration testing anti virus planning assistance, risk analysis and incident response. Provides security engineering support for application development (including system security certifications and project evaluations). This may include the development, design and implementation of firewalls, and evaluation, review and test of security code.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				
Senior Security Systems Specialist	C	D	E	F	G

C.1.16 IMAGE SYSTEM SUPPORT

Provides technical expertise for the installation, configuration and customization of imaging technologies. Evaluates and selects the appropriate technologies and solutions based on client requirements including both hardware and software. Evaluates methodologies and performs the integration of imaging systems with legacy applications. Provides services for both Digital Library and Computer Output to Laser Disk (COLD) environments.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Senior Consultant IT Specialist	A				
Certified IT Specialist	B				
Senior IT Specialist	C				
Advisory IT Specialist	D				
Image Systems Specialist	E	F	G	H	

C.1.17 INDEPENDENT VALIDATION AND VERIFICATION

Verifies and validates the products and performance of a third party development effort. Evaluates software and associated documents for compliance with specified requirements, and test results for adherence to test plans. Evaluates the products of a given software development activity to determine the correctness and consistency with respect to the products and standards provided as input to the activity. Evaluates and makes recommendations for solutions regarding problems associated with development efforts.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available							
IV & V Specialist	E	F	G	H	I	J	K	L

C.1.18 SOFTWARE TEST

Performs software testing at all levels from module or unit testing through all levels of software integration testing. Writes software test plans in support of software design to ensure the integrity of test plans. Interfaces with the software development group throughout the software development process. Develops test data and predefines specific test acceptance criteria. Supports the software configuration management process and understands all software components and their interface requirements.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Quality Assurance Specialist	E	F	G		
Senior Software Test Engineer	E	F	G		
Software Test Engineer	H	I	J	K	

C.1.19 SYSTEM TEST

Supports testing at a system level. Develops system test plans during systems requirements definition to ensure functional completeness of system testing. Works closely with both the systems engineering and software development groups throughout the systems and development process. Develops master test plans and identifies specific functional and performance test requirements. Supports the configuration management process and understands all system components and their relationship in an integrated environment.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Quality Assurance Specialist	E	F	G		
Senior Hardware Test Engineer	E	F	G		
Hardware Test Engineer	H	I	J	K	

C.1.20 TRAINING

Has overall responsibility for conducting customized training classes. Develops training plans and the associated curricula. Identifies the resources necessary to implement the plan and ensures that training is conducted in accordance with the plan. Identifies and analyzes training considerations such as central vs. regional, hands-on vs. classroom, train-the-trainer vs. train-the-user, etc.

POSITIONS AND EXPERIENCE LEVELS AVAILABLE

Position Title	Experience Levels Available				
Training Management/Systems Analyst	E	F	G	H	I

C.1.21 MACHINE MOVEMENT

Position Title	Experience Levels Available	
IT Specialist	C	D

C.2 HSPD-12 SERVICE RATES

Proposed GFY08-GFY12 SIN 132-62 Rates					
Labor Category	**GFY08**	**GFY09**	**GFY10**	**GFY11**	**GFY12**
Security Project Executive	$272	$278	$284	$292	$300
Trusted Identity Security and Privacy SME	$242	$248	$254	$261	$268
Senior Web Architect	$226	$231	$236	$243	$249
Trusted Identity Project Manager	$195	$199	$204	$210	$216
Trusted Identity Quality Assurance Specialist-Senior	$195	$199	$204	$210	$216
Trusted Identity Systems Architect/ Engineer - Lead	$195	$199	$204	$210	$216
Identity Management Privacy Analyst	$180	$184	$188	$193	$198
Trusted Identity Training Lead – Senior	$170	$174	$178	$183	$188
Quality Assurance Analyst	$159	$163	$167	$172	$177
Business Operations Specialist - Senior	$154	$158	$162	$167	$171
Identity Management IT Systems Engineer	$154	$158	$162	$167	$171
Security Change Management Consultant - Mid Level	$154	$158	$162	$167	$171
Trusted Identity Database Administrator	$154	$158	$162	$167	$171
Security Business Process Functional Senior Analyst – Senior	$150	$153	$157	$162	$166
Trusted Identity Senior Computer Specialist/ Programmer	$150	$153	$157	$162	$166
Web Architect	$144	$147	$150	$154	$158
Identity Management Systems Security Engineer	$144	$147	$150	$154	$158
Trusted Identity Computer Security Analyst	$144	$147	$150	$154	$158
Trusted Identity Computer Specialist/ Programmer –	$144	$147	$150	$154	$158
Security Business Process Functional Analyst	$134	$137	$140	$144	$148
Identity Management IT Software Specialist	$129	$132	$135	$139	$143
Trusted Identity Database Analyst	$129	$132	$135	$139	$143
Trusted Identity IT Hardware Specialist	$129	$132	$135	$139	$143
Trusted Identity Trainer	$126	$129	$132	$136	$140
Trusted Identity Database Programmer	$123	$126	$129	$133	$137
Security Document/Technical Writer	$118	$121	$124	$128	$131
Business Operations Specialist - Junior	$113	$116	$119	$122	$125
Identity Management Computer Specialist/Data Entry – Junior	$93	$95	$97	$100	$103
Trusted Identity Help Desk Specialist	$93	$95	$97	$100	$103
Trusted Identity IT System Analyst - Junior	$93	$95	$97	$100	$103
	Rates include .75% IFF				

C.2.1 Skill Level Descriptions

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Security Project Executive	Up to 20 years of progressive experience. Acts as a management authority for client engagements. Performs management of overall contract support operations, organizes, directs and coordinates the planning and production of contract support activities. Manages and coordinates resources, satisfying contract terms, and securing customer satisfaction. Monitors progress of project. Provides primary interface with client management personnel regarding strategic issues. (HSPD-12) Certification required: CISA, CISM or CISSP.
Trusted Identity Security and Privacy SME	Up to 15 years of progressive accomplishment as experts in large and complex information technology systems implementation. Under minimal direction, provides support for security related programs, policies and initiatives. Develops, establishes, and applies knowledge of security principles, concepts and industry practices and standards in the analysis of information and projects. Provides a solid understanding of federal information security/assurance policies, standards and regulations. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include credentialing topics such as PKI, biometrics, and smart cards. Utilizes his/her advanced skills and experience in systems development, detailed knowledge of business processes, technical background and security skills to implement business and security solutions. Performs analysis of security related risks, threats and vulnerabilities of systems, networks and applications. Recommends strategies to prevent security exposure and detect intrusions. Provides direction to IBM project teams and interact with clients at the supervisory level. (HSPD-12) Certification required: CISA, CISM, CISSP
Senior Web Architect	Up to 15 years of progressive experience. Leads or supports requirements analysis, design, development or maintenance of technical integrations or infrastructures for internal and external web applications, protocols, SOA implementations and interfaces. Certified as CISSP, CISM or CISA. Supports HSPD-12, Real ID and other credentialing initiatives or smartcard implementations.

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Trusted Identity Project Manager	Up to 15 years of progressive experience. Acts as the overall lead - manager and administrator for the contract effort. Manages all phases of projects from inception through completion. Establishes milestones, and monitors adherence to master plans and schedules. Implementing detailed management techniques such as Critical Path Method (CPM) and Earned Value Analysis. Detailed functional analysis and gap/fit analysis of Government-Off-the-Shelf (GOTS) and/or Commercial-Off-the-Shelf (COTS) software packages. Expert in Security Management. Knowledgeable of GSA HSPD 12 authorized products and services, Real ID requirements, and NIST standards. Detailed migration planning and trade-off analysis. Certification requirements: CISA, CISM, CISSP. Directs daily staff and task activities to meet client and corporate work objectives. Works with team members to resolve difficult problems. (HSPD-12)
Trusted Identity Quality Assurance Specialist - Senior	Up to 15 years of progressive experience. Able to execute the QA/QC process by reviewing work products for correctness, and adherence to the design concepts an standards, and reviewing program documentation to ensure adherence to standards and requirements. Coordinate with the project manager to ensure problem resolution and client satisfaction. Knowledgeable of FISMA, NIST and other security standards and regulatory mandates. Review software design, change specifications, and related plans against contractual requirements. (HSPD-12)
Trusted Identity Systems Architect/ Engineer - Lead	Up to 15 years of progressive accomplishment as experts in large and complex information technology systems implementation. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Ensures proper governance of program architecture. Able to design and develop new IT products based on client requirement and technical drivers. Performs major enhancements to existing IT systems. Serves as a technical expert, addressing problems of systems integration, compatibility, and multiple platforms. Evaluates and recommend appropriate hardware and network infrastructure based on cost, performance, need, quality, security and reliability. Strong understanding of network security including

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, secure telecommunications, two-factor authentication, encryption, PKI/Digital certificates, SSL based VPN solutions, web protocols and Identity Management. (HSPD-12)
Identity Management Privacy Analyst	Up to 12 years of progressive accomplishment as experts in large and complex information technology systems implementation. Creates analyses and develops strategies, policies, architectures, and privacy assessments to meet Federal mandates. Implements privacy practices in the organization, including collaboration with all the necessary functions (e.g. Legal, ADS, and HR etc). Knowledgeable of NIST PIV requirements, HSPD 12 and State privacy laws in support of Real ID. Monitors all ongoing activities related to the development, implementation, maintenance of, and adherence to, the organization's policies and procedures covering the privacy of, and access to, customer personal information in compliance with Federal law. Extend compliance process to all affiliated and non-affiliated third parties as appropriate. (HSPD-12)
Trusted Identity Training Lead – Senior	Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Leads the effort to design, develop, implement, and conduct training and instructions of technical-based subject matter. Defines training requirements, training objectives and test methods and designs instructionally valid training materials. Develops computer-based training objectives and methodologies. Coordinates with subject matter expert to design training strategy; designs courseware, including structuring training classes, creates lesson text, provides documentation for software training, tests training programs, presents training programs to users. May conducts research into new training, educational and multimedia technologies. (HSPD-12)

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Quality Assurance Analyst	Up to 10 years of progressive experience. Provides IV&V, QA/QC, survey and testing services by reviewing trusted identity processes ,technologies or work products for correctness and adherence to NIST standards, design concepts or and reviewing program documentation and requirements. Knowledgeable of FISMA, NIST and other security standards and regulatory mandates. Certified CISSP, CISA or CISM.
Business Operations Specialist - Senior	Up to 8 years of progressive experience. Supports level of project business activity by planning, directing, and coordinating the total operations of the project. Monitors daily operations to ensure contract requirements are met. Keeps abreast of major situations affecting service to customer and ensures all aspect of client satisfaction. (HSPD-12)
Identity Management IT Systems Engineer	Up to 12 years of progressive experience. Applies logical analyses or test and evaluation on programs within the contractual scope. Analyzes user needs and identifies resources required for each task to determine functional requirements. Assists in designing and development of new systems or modifies existing systems according to client's needs. Assists higher-level analysts in analyzing alternative systems, cost aspects and feasibility factors. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. (HSPD-12)
Security Change Management Consultant - Mid Level	Up to 12 years of progressive experience. Applies organizational change management processes and methodologies to facilitate communication of change messages. Prepares, maintains and inventories associated technical drawings for assigned projects. Researches data, and creates and maintains inventory and other databases for assigned projects. Prepares configuration change requests and verifies tracks and documents configuration changes. (HSPD-12)
Trusted Identity Database Administrator	Up to 10 years of progressive experience .Act as the overall lead and manager of database system management projects. Design software tools and subsystems to support and manage software systems implementation. Manage software development and support using formal specifications, data flow diagrams, other accepted design

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	techniques, and Computer Aided Software Engineering (CASE) tools. Knowledgeable of supporting database packages supporting privacy and security for the protection of and administration of identities. Knowledgeable of entity analytics software packages is desired. Provide technical expertise and guidance in the logical and physical database design, development, transition, operation and maintenance of database management systems. (HSPD-12)
Security Business Process Functional Senior Analyst – Senior	Up to 10 years of progressive experience. Serves as lead BPR functional Subject Matter Expert (SME) in their area of specialty. Applies their broad skills and specialized functional and technical expertise to guide project teams in delivering client solutions or to manage the day-to-day operations of IBM projects. Core job responsibilities to include design and implement new organizational structures, assist client to translate its vision and strategy into core human resource and business process. Lead clients through streamlining, reengineering and transforming business processes. (HSPD-12)
Trusted Identity Senior Computer Specialist/ Programmer	Up to 10 years of progressive experience. Defines business and technical requirement, establish scope, project plans, priorities and manage the efforts in delivering software applications. Design software tools and subsystems to support and manage software systems implementation. Manage software development and support using formal specifications, data flow diagrams, other accepted design techniques, and Computer Aided Software Engineering (CASE) tools. Provides leadership knowledge of computer science principles to perform complex software engineering assignments relative to the modification and/or development of software systems. Manages, formulates and develops systems or subsystems architecture, requirements, and design documents. (HPSD-12)
Web Architect	Up to 8 year of progressive experience. Provides support and design, develop and maintain a technical infrastructure for internal and external web applications. Develops web pages, page components and web application code/components for client. Manages designs, codes, tests, debugs and document programs. Participates in the technical design, development, testing,

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	implementation and maintenance of client's website. (HSPD-12)
Identity Management Systems Security Engineer	Up to 10 years of progressive accomplishment as experts in large and complex information technology systems implementation. Experience to include defining computer security requirements for high-level applications, evaluation of approved security product capabilities, and developing solutions to Multilevel Security (MLS) problems. Analyzes and defines security requirements for MLS issues. Designs, develops, engineers, tests and implements solutions to MLS requirements. Responsible for implementation and development of MLS. Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Participates in planning and installation of new security related hardware and networks. Strong understanding of network security including configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, routers, bridges, two-factor authentication, encryption, PKI/Digital certificates, SSL based VPN solutions and Identity Management. (HSPD-12)
Trusted Identity Computer Security Analyst	Up to 8 years of progressive experience. Analyze criteria for access controls, storage, reproduction, transmission, and destruction of data maintained automated systems requiring protection. Performs IT security assessments and evaluations. Plans and conducts security risk analysis, security evaluations, and audits of information processing system Familiar with the latest relevant security standards, including FIPS 201 and the related NIST special publications, as well as the associated technologies to include PKI, biometrics, and smart cards. Determines computer security compliance and effectiveness of information processing systems. Performs security awareness training. Strong understanding of network security including configuring and using firewall and IDS equipment, end-to-end information assurance, correlating security events across events across a WAN, TCP/IP DNS, firewall Technologies, IDS/IPS, anti-virus technologies, routers, bridges, two-factor authentication,

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	encryption, PKI/Digital certificates, SSL based VPN solutions and Identity Management. (HSPD-12)
Trusted Identity Computer Specialist/ Programmer	Up to 7 years of progressive experience. Provides mid-level analytical and problem solving skills when addressing and resolving issues, assessing possible system impacts, and recommending technical solutions. Provides knowledge of computer science principles to perform complex software engineering assignments relative to the modification and/or development of software systems. Performs software algorithm development, design, coding, and documentation work of systems. Familiar with modeling in UML using Rational Rose Real-time, coding in C++ using Rational Rose Real-time, C++ development using Microsoft Visual, GUI development in a Windows environment, and Object Oriented Design. (HSPD-12)
Security Business Process Functional Analyst	Up to 5 years of progressive experience. Provides BPR subject matter expertise to assist in implementing business process solutions. Assists in client's current business process flows. (HSPD-12)
Identity Management IT Software Specialist	Up to 8 years of progressive experience. Provides assistance in addressing software issues during IT engagements. Delivers a set of functional and technical services to assess, plan and implement software process improvement efforts for software development and maintenance to keep abreast with technological progress, economic change, and business needs. Involvement with software and hardware upgrades, planning and roll out of desktop and Laptop PC's. Knowledgeable of Web applications or Tivoli TIM/TAM/FIM. Review existing software programs and assist in making refinements, reducing operating time, and improving current development methods. (HPSD-12)
Trusted Identity Database Analyst	Up to 6 years of progressive accomplishment as experts in large and complex information technology systems implementation. Perform data analysis, database design, development activities, and implementation, as directed, for databases and database conversions. Develop and test logical and physical database designs. Review logical and physical designs of existing databases and perform tuning, in coordination with the DBA to ensure maximum operating efficiency. (HSPD-12)

SIN 132-62 Labor Category	SIN 132-62 Labor Description
Trusted Identity IT Hardware Specialist	Up to 6 years of progressive experience. Provides assistance in addressing hardware issues during IT engagements. Ability to work with client, identifies issues, and quickly provides resolution. Assist with the deployment of hardware to client including installation, configuration and testing. Analyzes customer LAN/WAN hardware/software Requirement. Designs LAN/WAN and recommends hardware, software, and communications solutions. Provides recommended solutions for future LAN/WAN growth. Provides solutions for problems incurred during LAN/WAN installations. Provides after-hours service for escalated issues. (HSPD-12)
Trusted Identity Trainer	Up to 6 years of progressive experience. Conducts the research necessary to develop and revise training courses and prepares appropriate training catalogs. Prepares all instructor materials (course outline, background material, and training aids). Prepares all student materials (course manuals, workbooks, handouts, completion certificates, and course critique forms). Train personnel by conducting formal classroom courses, workshops, and seminars. Provides daily supervision and direction to staff. (HSPD-12)
Trusted Identity Database Programmer	Up to 5 years of progressive experience. Performs analysis and programming of databases. Under general direction, designs, implements, and maintains moderately complex databases with respect to operating system, access control methods, validation checks, organization and statistical methods. Maintains database dictionaries, and integrates system through database design. (HSPD-12)
Security Document/Technical Writer	Up to 3 years of progressive experience. Reviews and edits highly complex written and graphic technical materials, including system configuration, documentation, studies, reports and other presentation graphics. Plans, writes, and maintains documentation pertaining to procedures, internal references manuals and knowledge bases. (HSPD-12)
Business Operations Specialist - Junior	Up to 3 years of progressive experience. Supports basic day-to-day functional management activities within the PMO. Maintain responsibility for budgeting, internal coordination, and reporting, estimating and financial

SIN 132-62 Labor Category	SIN 132-62 Labor Description
	analysis for the project. (HSPD-12)
Identity Management Computer Specialist/Data Entry – Junior	Up to 3 years of progressive experience. Applies knowledge of computer science principles to perform software engineering assignments relative to the modification and/or development of software systems. Formulates and develops systems or subsystems architecture, requirements, and design documents. Performs software algorithm development, design, and coding, of systems. Familiar with Tivoli TIM/TAM/FIM or WebSphere and other Web development software packages. (HPSD-12)
Trusted Identity Help Desk Specialist	Up to 2 years of progressive experience. Under direct supervision, provides customer assistance with routine inquiries, and problems such as software, hardware and network operations. Responds to and diagnoses problems through discussions with users. Includes problem recognition, research, isolation, and resolution steps. (HSPD-12)
Trusted Identity IT System Analyst - Junior	Up to 3 years of progressive experience. Assists Sr. IT Systems Analyst in preparing input and test data for the proposed system. Help develop plans for systems form project inception to conclusion. Analyzes the problem and information to be processes. Assists in designing and development of new systems or modifies existing systems according to client's needs. (HSPD-12)

APPENDIX D TABLE OF CONTENTS

APPENDIX D. SERVICE OFFERINGS 1

D.1 IBM SUPPORT SERVICES 1

D.1.1 Support Line 1

D.2 IBM SOFTWARE SUPPORT SERVICES - ACCOUNT ADVOCATE 2

D.3 OPERATIONAL SUPPORT SERVICES 4

D.3.1 z Series 4

D.3.2 pSeries 5

D.3.3 iSeries 5

D.4 MACHINE MOVEMENT SERVICES 6

D.5 ON DEMAND SERVICES 7

APPENDIX D. SERVICE OFFERINGS

D.1 IBM SUPPORT SERVICES

D.1.1 SUPPORT LINE

Monthly GSA Prices for Support Line

The offering below is billed per Location (the Base Price includes all machines under the Platform located at the customer location).

Platform	Base Price
SAN/NAS	$623
Disk/tape	$623

GSA Prices for Support Line Products

Annual price billed in monthly increments - the offering below is billed per Product (machine type/serial).

Platform	Base Price
Enterprise Disk	$1,511.00
ESS Mgmt Server	$1,113.00
ESS Admin Server	$317.00
ESS Data Server	$690.00
ESS Application Server	$317.00
Enterprise Tape	$705.00
Mid-Range Entry Tape System	
Small	$149.00
Medium	$403.00
Mid-Range Disk System	$906.00
NAS Products	$705.00
SAN Infrastructure Products	$312.00
Entry Level Disk System	$705.00
Power System Blade Center	$605.00

Notes:

- Standard Coverage is Prime Shift (8 x 5)
- Full Shift Coverage (24 x 7) carries a 35% price uplift

D.2 IBM SOFTWARE SUPPORT SERVICES - ACCOUNT ADVOCATE

iSeries and pSeries

Server	Processor Group	BASE CHARGES Base Monthly Price 8x5 (with IFF)	Monthly Price 24x7 Uplift	Per Server Monthly Price 8x5 (with IFF)	Monthly Price 24x7 Uplift
Account Advocate pSeries	C5	378	20%	43	20%
Account Advocate pSeries	D5	378	20%	43	20%
Account Advocate pSeries	E5	378	20%	49	20%
Account Advocate pSeries	F5	411	20%	80	20%
Account Advocate pSeries	G5	411	20%	80	20%
Account Advocate pSeries	H5	411	20%	145	20%
Account Advocate i Series	P05	378	20%	43	20%
Account Advocate i Series	P10	378	20%	43	20%
Account Advocate i Series	P20	378	20%	49	20%
Account Advocate i Series	P30	378	20%	49	20%
Account Advocate i Series	P40	411	20%	80	20%
Account Advocate i Series	P5	411	20%	145	20%
Account Advocate i Series	P50	411	20%	145	20%
Account Advocate i Series	P60	411	20%	145	20%

Notes:
(1) Base Charge is charged once per contract for the largest system in customer's inventory
(2) Base offerings are prerequisite for Per Server offerings
(3) Per Server Charge applies to all Machines covered under account advocate

System x

	Machine From	Quantity To	Linux Monthly Price 8 x 5 (with IFF)	Linux Monthly Price 24 x 7 Uplift	Monthly Price 8 x 5 (with IFF)	Monthly Price 24 x 7 Uplift
Account Advocate System x	1	1	353	20%	378	20%
Account Advocate System x	2	2	361	20%	386	20%
Account Advocate System x	3	3	370	20%	395	20%
Account Advocate System x	4	4	378	20%	403	20%
Account Advocate System x	5	5	391	20%	411	20%
Account Advocate System x	6	6	403	20%	428	20%
Account Advocate System x	7	7	416	20%	436	20%
Account Advocate System x	8	8	428	20%	445	20%
Account Advocate System x	9	9	436	20%	457	20%
Account Advocate System x	10	10	479	20%	504	20%
Account Advocate System x	11	20	521	20%	546	20%
Account Advocate System x	21	30	571	20%	596	20%
Account Advocate System x	31	40	630	20%	663	20%
Account Advocate System x	41	50	688	20%	713	20%
Account Advocate System x	51	60	748	20%	789	20%
Account Advocate System x	61	70	823	20%	874	20%
Account Advocate System x	71	80	911	20%	965	20%
Account Advocate System x	81	90	1025	20%	1079	20%
Account Advocate System x	91	100	1142	20%	1208	20%
Account Advocate System x	101	150	1251	20%	1323	20%
Account Advocate System x	151	200	1356	20%	1449	20%
Account Advocate System x	201	250	1519	20%	1604	20%
Account Advocate System x	251	300	1641	20%	1742	20%
Account Advocate System x	301	350	1780	20%	1877	20%
Account Advocate System x	351	400	1931	20%	2036	20%
Account Advocate System x	401	450	2099	20%	2217	20%
Account Advocate System x	451	500	2284	20%	2410	20%
Account Advocate System x	501	600	2645	20%	2792	20%
Account Advocate System x	601	700	2997	20%	3170	20%
Account Advocate System x	701	800	3401	20%	3585	20%
Account Advocate System x	801	900	3862	20%	4073	20%
Account Advocate System x	901	1000	4387	20%	4643	20%
Account Advocate System x	1001	1250	5063	20%	5348	20%
Account Advocate System x	1251	1500	5776	20%	6088	20%
Account Advocate System x	1501	1750	6566	20%	6935	20%
Account Advocate System x	1751	2000	7557	20%	7943	20%
Account Advocate System x	2001	2500	8607	20%	9068	20%

D.3 Operational Support Services

D.3.1 z Series

Software Xcel Enterprise Edition for z Series

MSU	Base Monthly Price	Additional Processors	Voice Uplift Prime Shift	Voice Uplift Full Shift
0.00 thru 0.99 MSU	$544	$55	$100	$239
1 MSU	$686	$69	$126	$302
2 MSU	$1,014	$102	$187	$447
3 MSU	$1,344	$135	$246	$592
4 MSU	$1,840	$184	$338	$811
5 MSU	$2,175	$217	$399	$958
6 thru 8 MSU	$2,738	$274	$504	$1,210
9 thru 15 MSU	$3,488	$349	$640	$1,536
16 thru 21 MSU	$4,349	$435	$798	$1,915
22 thru 28 MSU	$4,922	$492	$903	$2,168
29 thru 37 MSU	$5,379	$538	$987	$2,369
38 thru 78 MSU	$5,723	$573	$1,050	$2,521
79 thru 99 MSU	$6,867	$686	$1,260	$3,024
100 thru 178 MSU	$8,583	$859	$1,575	$3,780
179 and up	$9,184	$919	$1,685	$4,045
286 thru 450 MSU	$10,300	$1,030	$1,889	$4,571
451 and up MSU	$11,020	$1,102	$2,021	$4,891

Price Based on largest processor per site, 10% charge for additional processors. Millions of Service Unit (MSU) values can be found at http://www.ibm.com/zseries/library/swpriceinfo/.

Multi-Site discounts

2-5 sites 10%

6-10 sites 15%

over 10 20%

SW Xcel Basic Edition for zSeries

Monthly Rate: $683 per userid

Resolve for zSeries

Monthly Rate: $182 per userid

Alert for zSeries

Monthly Rate: $216 per userid

D.3.2 pSeries

Alert for pSeries

Monthly Rate: $45 per report destination.

eServer pSeries Performance Management

Monthly Rate: $75 per RS/6000, eServer pSeries or SP node or LPAR

D.3.3 iSeries

PM iSeries

Report Frequency Option	Electronic	Hard Copy
Monthly	$84	$200
Quarterly	N/A	$367

Alert for iSeries

Monthly Rate: $45 per report destination

D.4 Machine Movement Services

Maintenance Class	Skill Code
1	NA
2	D
3	C

Note:

Rates corresponding to the Skill Codes listed above may be found in Appendix C.1 IT Professional Services.

D.5 On Demand Services

On Demand Services have been designed to help customers meet their demanding Information Technology needs. These services can be used for a variety of IT requirements such as a collaboration service, a production environment or a data replication environment. The customer is provided with a Base System, delivered to their location or hosted at an IBM location, which is flexible and configured based on their unique needs. The base system is invoiced on a monthly basis. Start up services, also based on the customer's unique needs can be provided. These charges will be invoiced on a one time charge basis. As requirements increase, additional services and assets (e.g., Storage and additional MIPs) can be added by using the formulas below or other pricing methodologies (i.e., based upon number of users, usage-based, etc.). These additional services and assets (Storage and additional MIPS) will be invoiced on a monthly basis. GSA prices will apply to all the elements needed to price the requested level of service.

Base Services – Formula

Hardware needed

Plus

Total Software needed (either One Time Charge or Monthly times the number of months needed)

Plus

Services needed

Plus

Total hardware and software maintenance needed

Total Price for Base System (at GSA prices)

Total Price for Base System/Number of Months Required* = Monthly Base Services Price

Additional Terabytes of Storage – Formula

Hardware needed to increase Base System

Plus

Total Software needed to increase Base System (either One Time Charge or Monthly times the number of months needed)

Plus

Services needed to increase Base System

Plus

Total hardware and software maintenance delta to increase Base System

Total Price to increase Base System (at GSA prices)

Total Price to increase Base System/Number of Terabytes increased/Number of Months* = Price Per Terabyte Per Month

Additional MIPS – Formula

Hardware needed to increase Base System

Plus

Total Software needed to increase Base System (either One Time Charge or Monthly times the number of months needed).

Plus

Services needed to increase Base System

Plus

Total hardware and software maintenance delta to increase Base System

Total Price to increase Base System (at GSA prices)

Total Price to increase Base System/Number of MIPS increased/Number of Months* = Price Per MIP Per Month.

Note that this methodology will accommodate leveling the monthly price of these services (Base Services, Additional Storage, and Additional MIPs) over the customers defined period of performance and level of service.

Start-up, Installation, Test and Training – Formula (Customer requested services beyond the support normally included in IBM's standard offerings).

Start up Services needed

Plus

Installation Services needed

Plus

Testing Services needed

Plus

Training Services needed

Total One Time Charge for Start-up, Installation, Test and Training

*Maximum Base number of months not to exceed 84.

Software can only be ordered with hardware.

Terms and Conditions

Based on the requirements of the Government activity, this offering may include, in addition to Hardware, under Special Item Number (SIN 132-8), the following components from other SINs within the Schedule: IBM maintenance (SIN 132-12), IBM software (SIN 132-33), installation and de-installation of the hardware (SIN 132-51), and training (SIN 132-50). The standard offering terms and conditions of each applicable SIN will apply.

Each order must contain a Statement of Work outlining the customer's requirements, which must be mutually agreed to, by the Government and IBM prior to acceptance.

1. Ownership

- IBM retains all rights, title, and ownership to the products.
- The Government retains all rights to data stored on the system.
- The Government performs all day-to-day business operations and user requirements.
- The Government retains responsibility for loading software applications and data, for data integrity and for data administration tasks related to databases, file systems, and applications.

2. Termination

- The Government will be responsible for termination charges if partial or total cancellation of this service occurs prior to the end of the initially defined full contract term. Such charges will relate to the level of initial capital investment required to support the Government's defined level of requirements.
- The Government must provide a 3-month written notice prior to cancellation.
- The Government shall be responsible for the return of the equipment to IBM at the location specified by IBM

3. Performance of Services

- Processor Resource Change Requests / System Upgrades & Downgrades - IBM will respond to Government change requests, notifying the Government of an impact to the monthly rate. The Government must notify IBM prior to any additions/alterations/substitutions performed by a third party.

4. Invoicing

- This offer is billed monthly in arrears at a fixed priced amount determined by the above formula. Additional charges will apply if the configuration is changed during the term.

5. Contract Term Completion

- Upon completion of the full contract period, the Government will be responsible for the de-installation, removal and shipping of the Base System from the customer location.

APPENDIX E TABLE OF CONTENTS

APPENDIX E. WARRANTY PERIODS.....1

APPENDIX E. WARRANTY PERIODS

Machine Type	Period		Machine Type	Period
1519	3		3575	1
1740	3		3576	1
1742	3		3580	1
1750	4		3581	1
2003	1		3582	1
2026	1		3583	1
2027	1		3584	1
2029	1		3588	1
2061	1		3589	5
2064	1		3590	1
2066	1		3592	1
2074	1		3745	1
2084	1		3746	1
2086	1		3859	3
2094	1		3952	1
2101	1		3953	1
2102	1		3954	1
2103	1		3955	1
2104	1		3890	1
2105 - (B09, 100)	1		3995	1
2105 - (E10, E20, F10, F20, 750, 800)	3		3996	1
2106	3		4000	3 months
2107	4		4100	3 months
2108	1		4005	3 months
2109	1		4125	1*
2145	1		4159	1
2146	1		4161	3 months
2240	3		4230	3 months
2244	4		4232	1
2705	3 months		4247	3 months
2706	3 months		4308	1
2710	3 months		4320	1
2761	3 months		4332	1
2770	3 months		4370	3 months
2775	3 months		4400	3 months
2785	3 months		4516	1
2790	3 months		4519	1
2870	3 months		4520	1
2863	3		4523	1
2870	3 months		4525	1
3000	1		4527	1
3153	3		4528	1
3160	3 months		4529	1
3170	3 months		4530	1
3174	1		4537	1
3300	3 months		4538	1
3466	1		4540	1
3483	3		4541	1
3488	3		4545	1
3489	3		4547	1
3490	1		4610	1
3494	1		4758	1
3534	1		4800	1
3542	3		4835	1
3552	3		4840	1
3560	3		4890	1
3570	3		4912	1

Machine Type	Period		Machine Type	Period
4921	1		9032	1
4922	1		9037	1
4924	1		9076	1
4928	1		9077	1
4934	1		9110	3
5187	1*		9111	1
5192	1*		9112	1
5194	1*		9113	1
5196	3		9114	1
5504	3 months		9115	3
6094	1		9117	1
6400	3 months		9118	1
6500	3 months		9119	1
7009	1		9123	3
7013	1		9124	3
7014	1		9131	3
7015	1		9133	3
7017	1		9309	1
7022	1		9393	1
7025	1		9402	1
7026	1		9404	1
7028	1		9406	1
7029	1		9663	1
7031	1		9672	1
7036	1		9674	1
7038	1			
7039	1			
7040	1			
7043	1			
7044	1			
7046	1			
7048	1			
7060	1			
7080	3			
7081	3			
7082	3			
7133	1			
7203	1			
7205	1			
7206	1			
7208	1			
7210	1			
7212	1			
7310	1			
7311	1			
7315	1			
7316	1			
7337	1			
7852	1			
7868	1			
8226	1			
8230	1			
8270	1			
9022	1			
9027	1			

* Parts & labor plus additional 2 years parts only

Notes:

Warranty provisions are explained fully in Special Item 132-8.

Features have a warranty period of the same duration as the machine on which they are installed.

Period is stated in year(s) unless otherwise noted.

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APPENDIX F TABLE OF CONTENTS

APPENDIX F. MAINTENANCE AVAILABILITY STATUS 1

MACHINES WITH ANNOUNCED END-OF-SERVICE DATES AS OF 6/08/2010 1

APPENDIX F. MAINTENANCE AVAILABILITY STATUS

MACHINES WITH ANNOUNCED END-OF-SERVICE DATES AS OF 6/08/2010

Machine Type	Planned Maintenance Withdrawal Date
1722 6LU	12/31/2009
2026 224	12/31/2010
2026 E12	12/31/2010
2027 256	12/31/2011
2027 C40	12/31/2011
2105 100	12/31/2009
2105 B09	12/31/2009
2105 E10	12/31/2009
2105 E20	12/31/2009
2105 F10	12/31/2009
2109 F16	12/31/2009
2109 F32	03/31/2010
2109 M12	12/31/2009
2109 M14	12/31/2010
2145 4F2	12/31/2011
3174 02R	12/31/2011
3174 62R	12/31/2011
3174 64R	12/31/2011
3299 32T	12/31/2010
3552 1RU	12/31/2011
3420 006	12/31/2009
3420 008	12/31/2009
3422 A01	12/31/2009
3422 B01	12/31/2009

Machine Type	Planned Maintenance Withdrawal Date
3481 BA1	12/31/2009
3481 BA3	12/31/2009
3481 BG1	12/31/2009
3481 BG3	12/31/2009
3486 BA1	12/31/2009
3486 BA3	12/31/2009
3486 BG1	12/31/2009
3486 BG3	12/31/2009
3488 H11	12/31/2009
3488 H13	12/31/2009
3488 V11	12/31/2009
3488 V13	12/31/2009
3488 V1Z	12/31/2009
3488 V41	12/31/2009
3490 D31	12/31/2009
3534 F08	12/31/2009
3542 1RU	12/31/2009
3570 B1A	12/31/2009
3803 002	12/31/2009
3995 C16	12/31/2009
7011 23W	12/31/2011
7012 365	12/31/2011
7013 J01	12/31/2011
7013 S70	12/31/2011
7013 S7A	12/31/2011
7015 950	12/31/2009
7015 970	12/31/2011
7015 R5U	12/31/2011

Machine Type	Planned Maintenance Withdrawal Date
7048 120	12/31/2009
7048 270	12/31/2009
7134 010	12/31/2010
7137 414	12/31/2009
7137 514	12/31/2009
7203 001	12/31/2009
7204 112	12/31/2009
7204 113	12/31/2009
7204 114	12/31/2011
7204 118	12/31/2009
7204 139	12/31/2011
7204 315	12/31/2009
7204 325	12/31/2011
7204 339	12/31/2009
7204 404	12/31/2009
7204 418	12/31/2009
7207 011	12/31/2010
7207 315	12/31/2010
7208 002	12/31/2011
7212 312	12/31/2011
7317 D10	12/31/2009
7317 F3L	12/31/2009
7337 305	12/31/2011
7337 306	12/31/2011
8265 17S	12/31/2009
9076 201	12/31/2011
9076 202	12/31/2011
9076 205	12/31/2011

Machine Type	Planned Maintenance Withdrawal Date
9076 208	12/31/2011
9076 2A2	12/31/2011
9076 2A3	12/31/2011
9076 2A4	12/31/2011
9076 2A5	12/31/2011
9076 2A7	12/31/2011
9076 2A9	12/31/2011
9076 2AA	12/31/2011
9076 301	12/31/2011
9076 305	12/31/2011
9076 3A5	12/31/2011
9076 3A7	12/31/2011
9076 3A9	12/31/2011
9076 3AA	12/31/2011
9076 3B2	12/31/2011
9076 3B3	12/31/2011
9076 3B5	12/31/2011
9076 3B7	12/31/2011
9076 3B8	12/31/2011
9076 3B9	12/31/2011
9076 3BA	12/31/2011
9076 401	12/31/2011
9076 402	12/31/2011
9076 403	12/31/2011
9076 405	12/31/2011
9076 406	12/31/2011
9076 407	12/31/2011
9076 408	12/31/2011

Machine Type	Planned Maintenance Withdrawal Date
9076 40A	12/31/2011
9076 50H	12/31/2011
9076 555	12/31/2011
9309 001	12/31/2011
9309 002	12/31/2011
9331 011	12/31/2011
9331 012	12/31/2009
9333 010	12/31/2010
9333 011	12/31/2010
9333 500	12/31/2010
9333 501	12/31/2010
9334 010	12/31/2010
9334 011	12/31/2010
9334 500	12/31/2010
9334 501	12/31/2010
9336 020	12/31/2010
9337 220	12/31/2009
9337 225	12/31/2009
9337 240	12/31/2009
9337 440	12/31/2009
9337 480	12/31/2009
9337 540	12/31/2009
9348 011	12/31/2010
9390 001	12/31/2010
9390 002	12/31/2010
9391 A10	12/31/2010
9391 A30	12/31/2010
9392 B23	12/31/2010

Machine Type	Planned Maintenance Withdrawal Date
9392 B33	12/31/2010
9393 T42	12/31/2009
9393 T82	12/31/2009
9393 X82	12/31/2009
9394 001	12/31/2010
9394 002	12/31/2010
9395 B13	12/31/2010
9395 B23	12/31/2010
9402 E02	12/31/2009
9402 E04	12/31/2009
9402 E06	12/31/2009
9402 F02	12/31/2009
9402 F04	12/31/2009
9402 F06	12/31/2009
9402 200	12/31/2011
9402 20S	12/31/2011
9404 200	12/31/2011
9404 300	12/31/2011
9404 30S	12/31/2011
9404 310	12/31/2011
9404 320	12/31/2011
9406 E35	12/31/2009
9406 E45	12/31/2009
9406 E50	12/31/2009
9406 E70	12/31/2009
9406 E80	12/31/2009
9406 E90	12/31/2009
9406 F35	12/31/2009

Machine Type	Planned Maintenance Withdrawal Date
9406 F45	12/31/2009
9406 F50	12/31/2009
9406 F60	12/31/2009
9406 300	12/31/2011
9406 30S	12/31/2011
9406 310	12/31/2011
9406 320	12/31/2011

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APPENDIX G TABLE OF CONTENTS

APPENDIX G. DESIGNATED MACHINES FOR GRADUATED CHARGES 1

G1.1 IBM ISERIES AND AS/400 MACHINES 1

IBM ISeries And AS/400 Machines (Type 9401, 9402, 9404, 9045, 9406) 1

Version 5 Software 1

Model 8XX Version 5 Software (Capacity Upgrade On Demand) 6

Version 5 Software – eServer i5 8

Version 5 Software - Dedicated Server For Domino (TM) (DSD) 9

Model 8xx Version 4 Software 10

Model 7xx Version 4 Software 12

Model 2xx Version 4 Software 14

Version 4 Software 14

Version 1 And 2 Software 16

G1.2 IBM PSERIES AND RS/6000 MACHINES 17

System p Machines 17

OpenPower and pBlade Machines 20

APPENDIX G. DESIGNATED MACHINES FOR GRADUATED CHARGES

G1.1 IBM ISERIES AND AS/400 MACHINES

Designated Machines: If a Program with Processor-Based Charges is licensed for use on an IBM Machine not listed below, the Charges will be those for the Group with the highest Charges.

IBM ISERIES AND AS/400 MACHINES (TYPE 9401, 9402, 9404, 9045, 9406)

AS/400 programs announced with PPS-P60 processor-based charges for 2XX, 7XX, and 8XX models use the table below.

VERSION 5 SOFTWARE

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
890	0198	N/A		P50
890	0197	N/A		P50
890	2ADF	1591		P60
890	2ADC	1588		P60
890	2ADB	1587		P60
890	2AD9	1585		P60
890	2AD7	1583		P60
890	2AD5	1581		P60
890	2AD3	1579		P60
890	2AD2	1578		P60
890	2AD1	1577		P60
890	2AD0	1576		P50
890	2AFC	1588		P60
890	2AFB	1587		P60
890	2AF9	1585		P60
890	2AF7	1583		P60
890	2AF5	1581		P60
890	2AF3	1579		P60
890	2AF2	1578		P60
890	2AF1	1577		P60
890	2AF0	1576		P50
890	2498	N/A	7427	P50
890	2498	N/A	7425	P50
890	2497	N/A	7424	P50
890	2497	N/A	7422	P50

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
870	2486	N/A	7421	P40
870	2486	N/A	7419	P40
870	2489	N/A	7433	P40
870	2489	N/A	7431	P40
840	0159	N/A		P40
840	0158	N/A		P40
840	2461	1548		P50
840	2461	1546		P50
840	2461	1545		P50
840	2461	1544		P50
840	2461	1543		P50
840	2461	1542		P50
840	2461	1541		P50
840	2461	1540		P40
840	2420	1547		P50
840	2420	1546		P50
840	2420	1545		P50
840	2420	1544		P50
840	2420	1543		P50
840	2420	1542		P50
840	2420	1541		P50
840	2420	1540		P40
840	2418	1546		P50
840	2418	1545		P50
840	2418	1544		P50
840	2418	1543		P50
840	2418	1542		P50
840	2418	1541		P50
840	2418	1540		P40
830	24DE	N/A		P40
830	24DD	1537		P40
830	24DC	1536		P40
830	24DB	1535		P40
830	24DA	1534		P40
830	24D9	1533		P40
830	24D8	1532		P30
830	0153	N/A		P30
830	2403	1537		P50
830	2403	1536		P50
830	2403	1535		P50
830	2403	1534		P50
830	2403	1533		P50

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
830	2403	1532		P50
830	2403	1531		P40
830	2402	1536		P40
830	2402	1535		P40
830	2402	1534		P40
830	2402	1533		P40
830	2402	1532		P40
830	2402	1531		P30
830	2400	1535		P30
830	2400	1534		P30
830	2400	1533		P30
830	2400	1532		P30
825	2473	N/A	7418	P30
825	2473	N/A	7416	P30
820	2398	1527		P40
820	2398	1526		P40
820	2398	1525		P40
820	2398	1524		P40
820	2398	1523		P40
820	2398	1522		P40
820	2398	1521		P30
820	2397	1526		P30
820	2397	1525		P30
820	2397	1524		P30
820	2397	1523		P30
820	2397	1522		P30
820	2397	1521		P20
820	2396	1525		P30
820	2396	1524		P30
820	2396	1523		P30
820	2396	1522		P30
820	2396	1521		P20
820	2395	1524		P20
820	2395	1523		P20
820	2395	1522		P20
820	2395	1521		P10
270	2253	1520		P20
270	2253	1516		P20
270	2252	1519		P10
270	2252	1516		P10
270	2250	1518		P10
270	2250	1516		P10
270	2248	1517		P05

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
250	2296	NA		PPS
250	2295	NA		PPS
SB2	2315	NA		P30
SB3	2316	NA		P40
SB3	2318	NA		P40
820	2438	1527		P40
820	2438	1526		P40
820	2438	1525		P40
820	2438	1524		P40
820	2438	1523		P40
820	2438	1522		P40
820	2438	1521		P30
820	0152	NA		P30
820	2437	1526		P30
820	2437	1525		P30
820	2437	1524		P30
820	2437	1523		P30
820	2437	1522		P30
820	2437	1521		P20
820	0151	NA		P20
820	2436	1525		P30
820	2436	1524		P30
820	2436	1523		P30
820	2436	1522		P30
820	2436	1521		P20
820	0150	NA		P20
820	2435	1524		P20
820	2435	1523		P20
820	2435	1522		P20
820	2435	1521		P10
270	2434	1520		P20
270	2434	1516		P20
270	2432	1519		P10
270	2432	1516		P10
270	2431	1518		P10
810	2469	N/A	7448	P20
810	2469	N/A	7430	P20
810	2469	N/A	7428	P20
810	2467	N/A	7447	P10
810	2467	N/A	7412	P10
810	2467	N/A	7410	P10
810	2466	N/A	7446	P10
810	2466	N/A	7409	P10

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
810	2466	N/A	7407	P10
810	2465	N/A	7445	P10
800	2464	N/A	7408	P05
800	2464	N/A	0862	P10
800	2463	N/A	7400	P05
800	2463	N/A	0861	P05
800	2463	N/A	0860	P05

MODEL 8XX VERSION 5 SOFTWARE (CAPACITY UPGRADE ON DEMAND)

Model	Processor Feature	Interactive Feature	Processor Group
840	2354	1548	P50
840	2354	1547	P50
840	2354	1546	P50
840	2354	1545	P50
840	2354	1544	P50
840	2354	1543	P50
840	2354	1542	P50
840	2354	1541	P50
840	2354	1540	P40
840	2353	1547	P50
840	2353	1546	P50
840	2353	1545	P50
840	2353	1544	P50
840	2353	1543	P50
840	2353	1542	P50
840	2353	1541	P50
840	2353	1540	P40
840	2352	1546	P50
840	2352	1545	P50
840	2352	1544	P50
840	2352	1543	P50
840	2352	1542	P50
840	2352	1541	P50
840	2352	1540	P40
830	2351	1537	P40
830	2351	1536	P40
830	2351	1535	P40
830	2351	1534	P40
830	2351	1533	P40
830	2351	1532	P40
830	2351	1531	P30

VERSION 5 SOFTWARE – ESERVER I5

Model	Processor Feature	Server/Edition Feature	Processor Group
520	8950	7450	P05
520	8951	7451	P10
520	8952	7458	P10
520	8952	7459	P10
520	8953	7452	P10
520	8953	7453	P10
520	8954	7454	P20
520	8954	7455	P20
520	8955	7456	P20
520	8955	7457	P20
550	8958	7462	P20
550	8958	7463	P20
570	8971	7490	P30
570	8971	7491	P30
570	8971	7494	P30
570	8971	7495	P30
570	8971	7471	P40
570	8971	7472	P40
570	8971	7473	P40
570	8971	7474	P40
570	8971	7475	P40
570	8971	7476	P40
595	8981	7496	P50
595	8981	7497	P50
595	8981	7498	P50
595	8981	7499	P50
595	8981	7984	P60
595	8981	7985	P60

VERSION 5 SOFTWARE - DEDICATED SERVER FOR DOMINO (TM) (DSD)

Model	Processor Feature	Interactive Feature	Package Feature	Processor Group
825	2473	NA	7416	P20
820	2458	NA		P10
820	2457	NA		P10
820	2456	NA		P05
820	2427	NA		P10
820	2426	NA		P10
820	2425	NA		P05
810	2469	N/A	7428	P20
810	2467	N/A	7410	P20
810	2466	N/A	7407	P20
270	2454	NA		P10
270	2452	NA		P05
270	2424	NA		P10
270	2423	NA		P05
270	2422	NA		P05
170	2409	NA		P10
170	2408	NA		P05
170	2407	NA		P05

MODEL 8XX VERSION 4 SOFTWARE

Model	Processor Feature	Interactive Feature	Processor Group
840	2420	1547	P50
840	2420	1546	P50
840	2420	1545	P50
840	2420	1544	P50
840	2420	1543	P50
840	2420	1542	P50
840	2420	1541	P50
840	2420	1540	P40
840	2418	1546	P50
840	2418	1545	P50
840	2418	1544	P50
840	2418	1543	P50
840	2418	1542	P50
840	2418	1541	P50
840	2418	1540	P40
830	2403	1537	P50
830	2403	1536	P50
830	2403	1535	P50
830	2403	1534	P50
830	2403	1533	P50
830	2403	1532	P50
830	2403	1531	P40
830	2402	1536	P40
830	2402	1535	P40
830	2402	1534	P40
830	2402	1533	P40
830	2402	1532	P40
830	2402	1531	P30
830	2400	1535	P30
830	2400	1534	P30
830	2400	1533	P30
830	2400	1532	P30
830	2400	1531	P20
820	2398	1527	P40
820	2398	1526	P40
820	2398	1525	P40
820	2398	1524	P40
820	2398	1523	P40
820	2398	1522	P40

Model	Processor Feature	Interactive Feature	Processor Group
820	2398	1521	P30
820	2397	1526	P30
820	2397	1525	P30
820	2397	1524	P30
820	2397	1523	P30
820	2397	1522	P30
820	2397	1521	P20
820	2396	1525	P30
820	2396	1524	P30
820	2396	1523	P30
820	2396	1522	P30
820	2396	1521	P20
820	2395	1524	P20
820	2395	1523	P20
820	2395	1522	P20
820	2395	1521	P10

MODEL 7XX VERSION 4 SOFTWARE

Model	Processor Feature	Interactive Feature	Processor Group
740	2070	1513	P50
740	2070	1512	P50
740	2070	1511	P50
740	2070	1510	P50
740	2070	1514	P40
740	2069	1512	P50
740	2069	1511	P50
740	2069	1510	P50
740	2069	1514	P40
730	2068	1511	P40
730	2068	1510	P40
730	2068	1509	P40
730	2068	1508	P40
730	2068	1506	P30
730	2067	1511	P40
730	2067	1510	P40
730	2067	1509	P40
730	2067	1508	P40
730	2067	1506	P30
730	2066	1510	P30
730	2066	1509	P30
730	2066	1508	P30
730	2066	1507	P30
730	2066	1506	P20
730	2065	1509	P30
730	2065	1508	P30
730	2065	1507	P30
730	2065	1506	P20
720	2064	1505	P30
720	2064	1504	P30
720	2064	1503	P30
720	2064	1502	P30
720	2064	1500	P20
720	2063	1504	P30
720	2063	1503	P30
720	2063	1502	P30
720	2063	1500	P20
720	2062	1503	P20
720	2062	1502	P20

	Processor	Interactive	Processor
Model	**Feature**	**Feature**	**Group**
720	2062	1501	P20
720	2062	1500	P10
720	2061	1502	P20
720	2061	1501	P20
720	2061	1500	P10

MODEL 2XX VERSION 4 SOFTWARE

Model	Processor Feature	Interactive Feature	Processor Group
270	2253	1520	P20
270	2253	1516	P20
270	2252	1519	P10
270	2252	1516	P10
270	2250	1518	P10
270	2250	1516	P10
270	2248	1517	P05
250	2296	NA	PPS
250	2295	NA	PPS

Use the table below for Version 4 Software for other than Model 2XX, 7XX and 8XX.

* The letter 'X' means any alphabetic or numeric character.

VERSION 4 SOFTWARE

Group P05 Model*	Group P10 Model*	Group P10 (cont.) Model*	Group P20 Model*	Group P30 Model*	Group P40 Model*	Group P50 Model*
F02 P01 P02 P03 10S 150 170 (2159, 2160, 2289, 2290, 2291) 200 (2030) 20S 4XX (2130) 40S (2109 2110, 2111) 436 (2102) S10 (2118, 2119)	B10 B20 B30 B35 B40 B45 B50 C04 C06 C10 C20 C25 D02 D04 D06 D10 D20 D25 D35 D45 E02 E04 E06 E10	4XX (2131 2132, 2133) 40S (2112) 50S (2120, 2121, 2122) 436 (2104, 2106) S20 (2163, 2165, 2328, 2387, 2390, 2391) 600 (2134, 2135)	B60 B70 D50 D60 E25 E45 E50 F20 F25 F35 F45 135 140 170 (2183, 2386, 2388) 300 500 53S (2154, 2155, 2156, 2157) S20 (2166, 2170,	D70 D80 E60 E70 F50 F60 F70 310 510 S30 (2206, 2260, 2321, 2322, 2325, 2326) SB1 (2310) SB2 (2315) 620 (2180, 2181, 2231, 2232) S40 (2256)	E80 E90 E95 F80 F90 F95 F97 320 530 S40 (2207, 2208, 2261) SB1 (2311, 2312, 2313) SB3 (2316 2318) 620 (2182, 2233) 640 (2185, 2186,	650 (2188,2189) S40 (2340,2341)

Group P05 Model*	Group P10 Model*	Group P10 (cont.) Model*	Group P20 Model*	Group P30 Model*	Group P40 Model*	Group P50 Model*
S20 (2161) 600 (2129)	E20 E35 F04 F06 F10 100 170 (2164, 2176, 2285, 2292, 2385) 200 (2031, 2032) 30S		2177, 2178, 2330, 2331, 2392) S30 (2203, 2204, 2205, 2257, 2258, 2259, 2320, 2324) 600 (2136) 620 (2175, 2179, 2228, 2230)		2187, 2237, 2238, 2239) 650 (2240, 2243)	

VERSION 1 AND 2 SOFTWARE

Group B5		Group C5		Group D5		Group D6		Group E5	
Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model
9402	D02	9402	C04	9402	C06	9402	D06	9404	B20
9402	E02	9402	D04	9404	B10	9404	D10	9404	C20
9402	F02	9402	E04	9404	C10	9402	E06		
9402	100	9402	F04			9404	E10		
						9402	F06		
						9404	F10		
						9404	135		

Group E6		Group F5		Group F6		Group G5		Group G6	
Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model
9404	D20	9404	C25	9404	D25	9406	B40	9406	D45
9404	E20	9406	B30	9406	D35	9406	B45	9406	E45
9404	F20	9406	B35	9404	E25			9406	F45
9404	140			9406	E35				
				9404	F25				
				9406	F35				

Group H5		Group H6		Group J5		Group J6		Group K5	
Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model
9406	B50	9406	D50	9406	B60	9406	D60	9406	B70
		9406	E50			9406	E60		
		9406	F50			9406	F60		

Group K6		Group L6		Group M6		Group N6	
Machine Type	Model	Machine Type	Model	Machine Type	Model	Machine Type	Model
9406	D70	9406	D80	9406	E90	9406	E95
9406	E70	9406	E80	9406	F90	9406	F95
9406	F70	9406	F80			9406	F97

G1.2 IBM pSeries And RS/6000 Machines

Designated Machines: If a Program with Processor-Based Charges is licensed for use on an IBM Machine not listed below, the Charges will be those for the Group with the highest Charges.

System p Machines

Group	Group C5		Group D5		Group E5		Group F5		Group G5		Group H5		Group P5	
Max nWay			1-2 CPU		3-6 CPU		7-8 CPU		9-16 CPU		17-32 CPU		ALL SP	
	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod
	7037	A50	7006	41T	7012	G30	7013	J30	7040	671	7017	S80	9076	all
	7047	185	7006	41W	7012	G40	7013	J40	7013	S7A	7017	S85		
			7006	42T	7025	F50	7013	J50	7013	S70	7040	681		
			7006	42W	7025	F80	7015	R30	7017	S7A	7051	all		
			7008	M20	7025	6F0	7015	R40	7017	S70	9119	595		
			7008	M2A	7025	6F1	7015	R50	7015	S70				
			7009	C10	7025	H70	7016	all	7015	S7A				
			7009	C20	7026	B80	7026	M80	9119	590				
			7010	160	7026	H50	7026	6M1						
			7010	150	7026	H80	7038	6M2						
			7010	140	7026	H70	7039	651						
			7010	130	7026	6H0	9117	570						
			7010	120	7026	6H1	9118	575						
			7011	220	7043	270								
			7011	22W	7044	270								
			7011	230	9113	550								
			7011	23S	9116	561								
			7011	23T	9133	55A								
			7011	23W										
			7011	250										
			7011	25S										
			7011	25T										
			7011	25W										
			7012	320										
			7012	32H										
			7012	340										
			7012	34H										
			7012	350										
			7012	355										
			7012	360										
			7012	365										
			7012	36T										
			7012	370										
			7012	375										
			7012	37T										
			7012	380										
			7012	390										
			7012	39H										
			7012	397										
			7013	520										
			7013	52H										
			7013	530										

Group	Group C5		Group D5		Group E5		Group F5		Group G5		Group H5		Group P5	
Max nWay			1-2 CPU		3-6 CPU		7-8 CPU		9-16 CPU		17-32 CPU		ALL SP	
	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod
			7013	53H										
			7013	540										
			7013	550										
			7013	55L										
			7013	560										
			7013	570										
			7013	580										
			7013	58H										
			7013	590										
			7013	59H										
			7013	591										
			7013	595										
			7015	930										
			7015	950										
			7015	970										
			7015	97B										
			7015	980										
			7015	98B										
			7015	990										
			7015	R10										
			7015	R20										
			7015	R21										
			7015	R24										
			7024	E20										
			7024	E30										
			7025	F30										
			7025	F40										
			7026	H10										
			7028	6C1										
			7028	6E1										
			7028	6C4										
			7028	6E4										
			7029	6C3										
			7029	6E3										
			7030	3AT										
			7030	3BT										
			7030	3CT										
			7030	397										
			7043	140										
			7043	150										
			7043	240										
			7043	260										
			7044	170										
			7046	B50										
			7248	100										
			7248	120										
			7248	132										
			7249	all										
			7317	D20										
			7317	F3L										
			7596	001										
			8842	41x										
			9110	510										
			9110	51A										

Group	Group C5		Group D5		Group E5		Group F5		Group G5		Group H5		Group P5	
Max nWay			1-2 CPU		3-6 CPU		7-8 CPU		9-16 CPU		17-32 CPU		ALL SP	
	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod
			9111	285										
			9111	520										
			9112	265										
			9114	All										
			9115	505										
			9131	52A										

Charges for programs which have been announced with group P5 prices will vary depending on the number of nodes on the designated P5 machine and on the attached 9076-A01 and 9076-101 machines, except as otherwise specified in individual program announcements.

OpenPower and pBlade Machines

Group	Group C5		Group D5		Group E5		Group F5		Group G5		Group H5		Group P5	
Max nWay			1-2 CPU		3-6 CPU		7-8 CPU		9-16 CPU		17-32 CPU		All SP	
	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod	MT	Mod
	8842	All	9123	710										
	8844	All	9124	720										

APPENDIX I TABLE OF CONTENTS

APPENDIX I. SINGLE VERSION CHARGING 1

APPENDIX I. SINGLE VERSION CHARGING

Notes:

1. N/A

2. N/A

3. This IBM program has separately charged features. Single Version Charging applicability will be on a like for like feature/functional basis only. To accomplish this, features may be added to the replacement program or deleted from the replaced program.

B. Same as 3 above, plus the replacement product is the OS/390 Base.

O. Same as 3 above, plus the replacement product is an OS/390 Optional Feature.

4. N/A

5. N/A

6. N/A

7. N/A

8. N/A

9. This program has Use-Based Charges. Single Version Charging only applies when the number of se-Based features acquired for the replacement program are equal to, or exceed, the number acquired for the replaced program. To accomplish this, features may be added to the replacement program or deleted from the replaced program.

10. N/A

11. N/A

Point to Remember:

A. IBM may withdraw specific programs or upgrade combinations from the list upon six months notice.

APPENDIX J TABLE OF CONTENTS

APPENDIX J. PR/SM CHARGE OPTION.....1

J.1 IBM DEFINED OPERATING SYSTEM CATEGORIES.....1
J.2 NON-IBM PROGRAMS MULTIPLE OPERATING SYSTEM - PR/SM CHARGE OPTION.....2

APPENDIX J. PR/SM CHARGE OPTION

J.1 IBM DEFINED OPERATING SYSTEM CATEGORIES

MVS & UNIX® Operating System Category

OS/390	OS/390 (5645-001)
OS/390 V2	OS/390 (5647-A01)
z/OS	z/OS V1 (5694-A01)*
MVS/ESA	MVS/System Product V3, JES2 or JES3 (5685-001 or 5685-002) MVS/System Product V4, JES2 or JES3 (5695-047 or 5695-048)
MVS/XA	MVS/System Product V5, JES2 or JES3 (5655-068 or 5655-069) MVS/System Product V2, JES2 or JES3 (5740-XC6 or 5665-291)
MVS/370	MVS/System Product V1, JES2 or JES3 (5740-XYS or 5740-XYN)
RTPMIS	Realtime Plant Mgm't Integrated System V2 (5695-073) Realtime Plant Mgm't Integrated System V1 (5685-074)
UNIX	AIX/ESA (5756-112)

VM Operating System Category

z/VM	z/VM V3 (5654-A17)* z/VM V4.1 (5739-A03)* z/VM V5 (5741-A05)*
VM/ESA	VM/ESA V2 (5654-030) VM/Enterprise System Architecture (5684-112)
VM/XA	VM/Extended Architecture System Product (5664-308) VM/Extended Architecture System Facility (5664-169)
VM/SP	VM/System Product (5664-167) VM/Integrated System (5664-301)

VSE Operating System Category

z/VSE	VSE Central Functions V8 (5686-CF8) VSE Central Functions V7 (5686-CF7)

VSE/ESA	VSE Central Functions V6 (5686-066) VSE/Advanced Functions V5 (5686-032)
VSE/SP	VSE/Advanced Functions V4 (5686-007) VSE/Advanced Functions V2 (5666-301) VSE/Advanced Functions V1 (5746-XE8) VSE/SP V2 (5666-316) VSE/SP V1 Production (5666-296) VSE/SP V1 Generation (5666-297) VSE/SP partial function PRPQs
SSX	Small System Executive (5666-265) SSX partial function PRPQs

TPF Operating System Category

TPF	Transaction Processing Facility V4 (5748-T14) Transaction Processing Facility V3 (5748-T13) Transaction Processing Facility V2 (5748-T12) Transaction Processing Facility V1 (5748-T11)

DPPX Operating System Category

DPPX/370 (5660-292)

* - These Programs do not have MOSP charges. However, they qualify as eligible Programs, if normally running concurrently with an eligible Program from a different category. If z/VM is running only on one or more integrated facility for Linux (IFL) engines, it does not qualify.

Note: Machines qualify in a category when one or more of the IBM Programs within it are in use. The categories extend to include IBM PRPQ derivations of the listed programs. Categories and programs from this Appendix may be used in conjunction with the non-IBM program categories listed in this Appendix to determine multiple operating system eligibility.

J.2 Non-IBM Programs Multiple Operating System - PR/SM Charge Option

Non-IBM Defined Operating System Categories

1. MVS & UNIX™ Operating System Category (™ Registered trademark of UNIX System Laboratories Inc.)

UTS™ Release 2 from Amdahl Corporation (™ Registered trademark of Amdahl Corporation)

UTS™ Version 4 from Amdahl Corporation (™ Registered trademark of Amdahl Corporation)

HI-OSF/1™-M from Hitachi Data Systems (™ Registered trademark of the Open Software Foundation, Inc.)

2. VM Operating System Category

No qualifying operating systems have been identified at this time.

3. VSE Operating System Category

No qualifying operating systems have been identified at this time.

4. TPF Operating System Category

No qualifying operating systems have been identified at this time.

Multiple Operating Systems - PR/SM™ Charge Option (MOSP) Certification for Government Customers

The following information must be provided to IBM with the Government's delivery order in order to qualify for MOSP. This information serves as certification of MOSP machine and program eligibility.

MACHINE CERTIFICATION

The Government certifies that the following IBM System/370, System/390, or non-IBM machine (see Appendix J for qualifying IBM and non-IBM machines) has or will have either Processor Resource/System Manager™ (PR/SM) installed, or a machine partitioning facility similar to PR/SM installed for a non-IBM machine. (Use separate forms for multiple machines).

Qualifying Machine:

Vendor	Machine No.	Model No.	Serial No.

PROGRAM CERTIFICATION

The Government certifies that the following eligible IBM Operating Systems (see this Appendix for eligible Operating Systems) and eligible IBM programs are licensed to the machine above and are running or will be running concurrently.

Qualifying Programs:

Program No.	Serial No.	Program Name

Under the Terms and Conditions contained within this Schedule Contract, the Government agrees that it will promptly notify IBM in writing if PR/SM or other machine partitioning facility is removed from the qualifying machine or if the Government ends normal concurrent use of the eligible programs. In such cases, the regular software group level charges apply effective on the date the machine partitioning facility is removed.

APPENDIX K TABLE OF CONTENTS

APPENDIX K. MEASURED USAGE LICENSE CHARGE USAGE BANDS 1

1. PROGRAMS FOR WHICH MEASURED USAGE LICENSE CHARGES BY SERVICE UNITS ARE AVAILABLE 1
2. PROGRAMS FOR WHICH MEASURED USAGE LICENSE CHARGES BY GIGABYTES READ ARE AVAILABLE 2

APPENDIX K. MEASURED USAGE LICENSE CHARGE USAGE BANDS

1. PROGRAMS FOR WHICH MEASURED USAGE LICENSE CHARGES BY SERVICE UNITS ARE AVAILABLE

5655-DB2 DB2 for OS/390	5685-012 IMS/ESA DB Ver 4
5655-018 CICS/ESA Ver 4	5685-013 IMS/ESA TM Ver 4
5655-147 CICS TS for OS/390	5685-025 TSO/E Ver 2*
5655-158 IMS/ESA Ver 6	5685-083 CICS/ESA Ver 3*
5665-DB2 DataBase 2 Ver 2*	5685-DB2 Database 2 Ver 4
5665-403 CICS/MVS Ver 2*	5685-068 TPF/MVS (ALCS) Ver 2
5665-408 IMS/ESA DB Ver 3	5695-137 MQM MVS/ESA Ver 1*
5665-409 IMS/ESA TM Ver 3	5695-176 IMS/ESA Ver 5
5685-DB2 DataBase 2 Ver 3	5645-DB2 DB2 for OS/390 V6

*Not available for all releases of this version

Usage Bands and ranges for these Programs

Usage Band	Usage Range (CPU SUs in millions)		
1	0.000	-	0.250
2	0.251	-	0.500
3	0.501	-	1.000
4	1.001	-	1.500
5	1.501	-	2.500
6	2.501	-	3.500
7	3.501	-	5.500
8	5.501	-	7.500
9	7.501	-	10.500
10	10.501	-	14.000 +

+ An additional charge will apply per million CPU SUs above 14 million

2. Programs For Which Measured Usage License Charges By Gigabytes Read Are Available

5655-065 BatchPipes/MVS

Usage Bands and ranges for this Program

Usage Band	Usage Range (CPU SUs in millions)		
1	0.000	-	0.750
2	0.751	-	1.500
3	1.501	-	3.000
4	3.001	-	4.500
5	4.501	-	7.500
6	7.501	-	10.500
7	10.501	-	16.500
8	16.501	-	22.500
9	22.501	-	31.500
10	31.501	-	42.000 #

An additional charge will apply per GB above 42 Gbs

APPENDIX L TABLE OF CONTENTS

APPENDIX L. PARALLEL SYSPLEX LICENSE CHARGES 1

PARALLEL SYSPLEX ENVIRONMENT 1
PSLC OPTION 2

APPENDIX L. PARALLEL SYSPLEX LICENSE CHARGES

PARALLEL SYSPLEX ENVIRONMENT

To qualify for Parallel Sysplex license charges you must have two or more machines in Group A actively coupled using the applicable coupling links and facility in Group B and operating the programs in Group C. On an annual basis, upon IBM's request, the Government will provide IBM with a completed IBM Sysplex Verification Package (available at http://www-03.ibm.com/servers/eserver/zseries/swprice/sysplex/sysplex_valid.html for any year during which the Government receives PSLC pricing.

Parallel Sysplex license charges will be based on the sum of the service units (shown as million service units per hour (MSU)) of all machines in a Parallel Sysplex environment on which a program is used.

To be actively coupled, the following criteria must be met:

1. All machines in the Parallel Sysplex must be physically attached via coupling links to a common Coupling Facility from Group B of this Exhibit. In addition, time synchronization must be provided using either timer links to a common Sysplex Timer or coupling links transporting Server Time Protocol ("STP") timing information in an STP Coordinated Timing Network ("CTN").

Note: If a Coupling Facility is divided into multiple logical partitions (LPAR's), all machines must be attached to the same Coupling Facility LPAR.

2. All z/OS, zOS.e, OS/390 and MVS/ESA V5 images that comprise the Parallel Sysplex environment must have at least one common systems enablement function activated to use the Coupling Facility across all images in the sysplex. Eligible systems enablement functions are listed below:

A. Application Data Sharing including:

   a. IMS/TM: with IMS DB or DB2

   b. CICS: with IMS DB or DB2 or VSAM RLS

   c. TSO and DB2 data sharing

   d. An eligible Independent Software Vendor's Data Base from Group C of this exhibit.

B. GRS Star Implementation

C. JES2 Checkpoint in the Coupling Facility

D. RACF database caching

E. SmartBatch multisystem processing

F. VTAM Generic Resources

G. VTAM MULTINODE Persistent Sessions

H. Automated tape sharing and switching

I. System logger SYSLOG (OPERLOG)

J. System logger LOGREC

K. System logger Resource Recovery Services

3. The configuration and operating modes described in this exhibit must be the normal mode of operations for this environment. The z/OS, z/OS.e, OS/390 and MVS Image(s) participating in the above Sysplex function(s) must account for at least 50% of the total z/OS, z/OS.e, OS/390 and MVS workload on each machine. A machine can only be in one Parallel Sysplex for pricing purposes. If the machine is partitioned, and the partitions are in different qualifying Parallel Sysplexes, the customer may select which Parallel Sysplex the machine will be included in for billing.

Increases in any IBM System z Program PSLC charges, due to changes in the MSU rating for any machine that they are licensed to, will be in effect for a minimum period of one month.

The Government has a choice of selecting either, if available, but not both, Workload License Charges (“WLC”) or Parallel Sysplex License Charges (“PSLC”) for all IBM Programs on a machine that has z/OS or z/OS.e licensed to it. However:

1. IBM Programs with WLC may not be licensed to the same machine as IBM Programs with PSLC;

2. once the Government selects WLC, the Government may not switch back to PSLC without prior IBM approval, which IBM may grant in it sole discretion; and

3. WLC Programs and PSLC Programs may not be aggregated together for pricing purposes.

Additional information regarding the technical aspects of Parallel Sysplex aggregation and detailed information on tools, processes and procedures may be found at the Sysplex Aggregation website at the following URL: http://ibm.com/zseries/swprice/sysplex/

PSLC OPTION

1. Between April 1, 2002 and September 30, 2002, you may elect PSLC or aggregated PSLC, as applicable, ("PSLC Option"), for Programs on any of the following:

A. A System z9, z990 or z900 with Workload License Charges ("WLC").

B. A System z9, z990 or z900 when z/OS is being installed.

C. A WLC-eligible z890 or z800 in a Parallel Sysplex.

You may not make these elections retroactively.

2. On or after October 1, 2002, you may elect the PSLC Option if any of the following conditions occur:

A. You install a standalone System z9, z990 or z900 with z/OS, unless the System z9, z990 or z900 is replacing a machine with WLC.

B. You move a WLC-eligible System z9 or zSeries machine into a Parallel Sysplex that consists only of machines with PSLC and, optionally, zSeries Entry License Charges ("zELC").

C. You move a System z9, z990 or z900 with z/OS and the PSLC Option out of a Parallel Sysplex, i.e., a z900 becomes a standalone machine.

D. You install z/OS on a standalone System z9, z990 or z900 with PSLC.

E. You install z/OS or z/OS.e on a System z9 or zSeries machine with PSLC, and that machine is in a Parallel Sysplex that consists only of machines with PSLC and, optionally, zELC.

3. Under this option,

A. The Programs may remain on PSLC until such time as you elect a different type of charge. However, in the case of standalone z890s or z800s, the only eligible charge is zELC;

B. Programs on all WLC-eligible System z9 or zSeries machines in a Parallel Sysplex must have PSLC, except for z890s or z800s with zELC;

C. You may also elect other charging options, such as those covered in the IBM System z9, eServer zSeries and S/390 Usage Pricing Charges and the IBM System z9, eServer zSeries and S/390 New Application License Charges,

D. You may not elect the Workload License Charges Transition Program - Parallel Sysplex or the Workload License Charges Transition Program - Standalone Machine ; and

E. If you change Program charges on a machine to WLC, the Workload License Charges -IBM System z9 and eServer zSeries Workload License Charges applies, and you must accept its terms at that time, if you have not already done so.

Group A

For IBM, Amdahl and HDS product information, see
http://www.ibm.com/zseries/library/swpriceinfo/

(See Machines with PSLC=Yes or PSLC=Agg in the PSLC column. Note: In order for an IBM 2066 Machine to be eligible, refer to Appendix V)

Group B

Qualifying Coupling Facilities may be one of the following:

1. Standalone Coupling Facilities on IBM or other manufacturers' machines, as listed in the Machines column of the Standalone Coupling Facilities section on http://www.ibm.com/zseries/library/swpriceinfo/ Amdahl, Comparex, Fujitsu, HDS, Hitachi, and Olivetti machines must have the external coupling link features installed and operational.

2. Processors (machines) in which LPARs may be configured to act as Coupling Facilities as listed in the appropriate manufacturer's section on http://www.ibm.com/zseries/library/swpriceinfo/ Machines which qualify are designated by the letters "CF" in the Coupling Facility column.

The following specific conditions apply to these processors (machines):

For IBM:

A machine with an Internal Coupling Facility (ICF), or

A 9672, 2064, 2066, 2084, 2086, or 2096 with one or more central electronic complexes (CECs) or logical partitions running the Coupling Facility control code, or

A 9021 with engineering change 228270 or later installed, and a logical partition running the Coupling Facility control code.

For Amdahl:

A machine with the following installed and operational:

Amdahl Parallel Sysplex Migration Feature (PSMF), or

Amdahl Coupling Control Code and external coupling link features, or

For Millennium machines, Amdahl Internal Coupling Server feature and external coupling link features.

For Comparex:

A C2000 or M3000 machine, or

A M2000 machine with the Voyager Coupling Code and external coupling link features installed and operational.

For Fujitsu:

A machine with the following installed and operational:

Fujitsu Parallel Sysplex Migration Feature (PSMF), or

Amdahl Coupling Control Code and external coupling link features, or

for Millennium Global Server machines, Fujitsu Internal Coupling Server feature and external coupling link features.

For HDS and Olivetti:

A Pilot or Trinium machine, or

A Skyline machine with the Voyager Coupling Code and external coupling link features installed and operational.

For Hitachi:

A GP7560 or GP7600 machine, or

A GP7580 machine with the Voyager Coupling Code and external coupling link features installed and operational.

Group C [2]

The following programs at the stated release level or higher, or subsequent versions, are required.

Description	Program Number
EITHER	
z/OS.e (z/OS.e itself is not eligible for PSLC)	5655-G52

OR	
Z/OS	5694-A01
OR	
OS/390	5645-001
OR	
OS/390 V2	5647-A01
OR	
MVS/ESA Version 5 Release 2.2, and	JES2 5655-068, or JES3 5655-069
DFSMS/MVS Version 1 Release 3	5695-DF1
with full function or any of the	
alternatives 1 through 5, and	
ACF/VTAM Version 4 Release 3	5695-117
for MVS/ESA	
OR	
MVS/ESA Version 5 Release 1, and	JES2 5655-068, or JES3 5655-069
DFSMS Version 1 Release 2, and	5695-DF1
ACF/VTAM Version 4 Release 2 for MVS/ESA	5695-117
A Parallel Data Base Manager - one of the following:	
IMS/ESA Version 5 with IMS DB feature	5695-176
IBM Database 2 for MVS/ESA Version 4	5695-DB2
ADAPLEX+ [3]	
ORACLE7 Parallel Server for MVS [4]	
CA-IDMS Rel 14.0 [5]	
CA-Datacom Rel 9.0 [5]	
A Parallel Transaction Manager - one of the following:	
CICS/ESA Version 4	5655-018
IMS/ESA Version 5 with IMS/TM feature	5695-176

[2] Any variation to this list of programs must be agreed to in writing by IBM.

[3] A product of Software AG.

[4] A product of Oracle Corp.

[5] A product of Computer Associates Corp.

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APPENDIX M TABLE OF CONTENTS

APPENDIX M. SYSTEM Z WORKLOAD LICENSE CHARGES 1

SYSTEM Z WORKLOAD LICENSE CHARGES 1

APPENDIX M. SYSTEM Z WORKLOAD LICENSE CHARGES

SYSTEM Z WORKLOAD LICENSE CHARGES

1. Eligible Operating Systems

z/OS 5694-A01

z/OS.e 5655-G52 (z/OS.e itself is not eligible for WLC)

z/TPF 5748-T15 (z/TPF does not support the capping function)

2. Eligible Machines

For product information, see http://www.ibm.com/zseries/library/swpriceinfo/

(See Machines with WLC in the WLC column, NOTE: In addition, if EWLC, TWLC or zELC appears in the Group column, the Government must agree to the terms in Chapter 5 Item 5.9.13)

3. Applicable Coupling Facilities

Standalone Coupling Facilities on a System z, as listed in the Machines column of the Standalone Coupling Facilities section on http://www.ibm.com/zseries/library/swpriceinfo/

System z Machines in which LPARS may be configured to act as Coupling Facilities as listed on http://www.ibm.com/zseries/library/swpriceinfo/. Machines which qualify are designated by the letter "CF" in the Coupling Facility column.

Both of these require the Machine running the Coupling Facility control code.

4. Systems Enablement Functions

1. Application Data Sharing including:
   a. IMS TM: with IMS DB or DB2
   b. CICS: with IMS DB or DB2 or VSAM RLS
   c. TSO and DB2 data sharing
   d. ADAPLEX+ (A product of Software AG)
   e. ORACLE7 Parallel Server for MVS (A product of Oracle Corp)
   f. CA-IDMS Rel 14.0 (A product of Computer Associates Corp)
   g. CA-Datacom Rel 9.0 (A product of Computer Associates Corp)
2. GRS Star Implementation
3. JES2 Checkpoint in the Coupling Facility
4. RACF database caching
5. SmartBatch multisystem processing
6. VTAM Generic Resources

7. VTAM MULTINODE Persistent Sessions
8. Automated tape sharing and switching
9. System logger SYSLOG (OPERLOG)
10. System logger LOGREC
11. System logger Resource Recovery Services
12. WebSphere MQ shared message queues
13. HSM common recall queues
14. Enhanced catalog sharing

5. Date that the Government will transmit the Sub-Capacity Reports to IBM per the process below:

Second, but not later than the ninth, calendar day of the month.

6. E-mail address for transmitting Sub-Capacity Reports to IBM:

US FEDERAL: fednotes@us.ibm.com or eswfed@us.ibm.com

APPENDIX N TABLE OF CONTENTS

APPENDIX N. IBM SYSTEM Z9 ESERVER ZSERIES AND S/390 USAGE PRICING CHARGES 1

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APPENDIX N. IBM SYSTEM Z9 ESERVER ZSERIES AND S/390 USAGE PRICING CHARGES

Effective Date: April 27, 2006

Programs for which Usage Pricing Charges by service units ("SUs") are available:

See: http://www.ibm.com/zseries/library/swpriceinfo/

Usage Pricing Charges require OS/390 V2 or z/OS. However, Usage Pricing Charges are not available if Workload License Charges are in effect for any Program licensed to the same machine.

Usage Levels and ranges for these Programs

Usage Level	Usage Range in MSUs (CPU SUs in millions)
Base 1	0.00 - 0.25
Base 2	0.26 - 0.50
Base 3	0.51 - 1.00
Level A	2.00 - 11.00
Level B	12.00 - 44.00
Level C	45.00 - 78.00
Level D	Over 78

Pricing for usage below one MSU requires one feature at the appropriate usage level, while usage above one MSU requires the one MSU (Base 3) feature plus the appropriate number of Level A, B, C and D features. For charging purposes, reported usage above one MSU is rounded to the nearest whole MSU.

APPENDIX O TABLE OF CONTENTS

APPENDIX O. EWLC, TWLC, ZELC AND Z/OS.E LICENSE CHARGES 1

APPENDIX O. EWLC, TWLC, ZELC AND Z/OS.E LICENSE CHARGES

1. Logical Model Combinations for zELC

Revision Date: April 27, 2006

z/800 Physical Machine Model	Number of Physical Engines	z/OS.e Logical Model	Non-z/OS.e Logical Model	Number of Non-z/OS.e Engines
One z/OS.e engine				
0X2	2	0C1	0A1	1
0A2	2	0C1	0B1	1
002	2	0C1	001	1
003	3	0C1	002	2
004	4	0C1	003	3
Two z/OS.e engines				
003	3	0A2	001	1
004	4	0A2	002	2
Three z/OS.e engines				
004	4	003	0B1	1

If z/OS.e runs on all the physical engines **or** none of the physical engines, then the Logical Model is the same as the physical machine model.

zELC charges for a Program running on only one Logical Model are based on the category of that Logical model.

zELC charges for a Program running on both the z/OS.e Logical Model and the non-z/OS.e Logical Model are based on the category of the physical machine model.

2. Default charges apply when zELC charges are not available for a Program and the Program's charges are based on machine capacity. Default charges are specified on the System z9 and zSeries Software Pricing Website for each applicable machine in the column called "Other."

3. **Eligible Machines:**

IBM System z9 Business Class

IBM eServer zSeries 890

IBM eServer zSeries 800

(Individual Eligible Machines are specified in the "Group" column of the System z9 and zSeries Software Pricing Website by "EWLC", "TWLC", or "zELC"

4. **Eligible Operating Systems:**

z/OS 5694-A01

z/OS.e 5658-G52

z/TPF 5748-T15

5. **Date that you will transmit the Sub-Capacity Reports to IBM:** Second, but not later than the ninth calendar day of the month.

6. **E-mail address for transmitting Sub-Capacity Reports to IBM:**

   US FEDERAL: fednotes@us.ibm.com or eswfed@us.ibm.com

APPENDIX P FOR CALCULATION OF Z/TPF MSUS

APPENDIX P FOR CALCULATION OF Z/TPF MSUS 1

APPENDIX P FOR CALCULATION OF z/TPF MSUS

The terms herein modifies or is in addition to the terms for IBM System z9 and eServer zSeries Workload License Charges, or for IBM eServer zSeries 890 and 800 Software License Charges, as applicable. It applies to the z/TPF operating system and to IBM Programs running under z/TPF.

The Sub-Capacity Reporting Tool ("SCRT") calculates the number of MSUs used across all of the LPARs in which each z/TPF VWLC IBM Program ran during the Reporting Period, as described in the tables below.

"SCRT Enabling Code" is a functional enhancement to z/TPF that enables z/TPF to create the SMF records required for the SCRT to generate a Sub-Capacity Report based on z/TPF use.

Additional License Terms:

1. The Government must run z/TPF in an LPAR with the naming convention 'TPFnxxxx' where the 'n' must equal 'T' for test systems or 'P' for production systems. The final four characters ('xxxx') are for the Government's use.

If the z/TPF-based EWLC or VWLC IBM Program ran in ...		and z/OS or z/OS.e ran concurrently at all times with those z/TPF LPAR(s) in ...	then the number of MSUs associated with the z/TPF-based EWLC or VWLC IBM Program is based on the Program's peak hour utilization across all LPARs during the Reporting Period, with the Program utilization for each hour being the highest combined:
z/TPF Native LPAR(s)...	and z/TPF Guest LPAR(s)...	z/OS or z/OS.e Native LPAR(s)	
Yes with SCRT89 records from at least one LPAR	No	No	1. 4-hour rolling average utilization across all of the z/TPF Native LPARs that supply SCRT89 records, plus 2. the 4-hour rolling average LPAR utilization across all of the z/TPF Native LPARs that have shared engines and do not supply SCRT89 records, plus 3. the maximum capacity of all of the z/TPF Native LPARs that have dedicated engines and do not supply SCRT89 records
Yes with or without SCRT89 records	No	Yes	
Yes with SCRT89 records from at least one LPAR	Yes (note 1)	No	1. 4-hour rolling average utilization across all of the z/TPF Native LPARs and z/TPF Guest Systems that supply SCRT89 records, plus 2. the 4-hour rolling average LPAR utilization across all of the z/TPF Native and Guest LPARs that have shared engines and do not supply SCRT89 records, plus 3. the maximum capacity of all of the z/TPF Native and Guest LPARs that have dedicated engines and do not supply SCRT89 records
Yes with or without SCRT89 records	Yes (note 1)	Yes	
No	Yes (note 2)	No	The 4-hour rolling average utilization across ali of the z/TPF Guest LPARs
No	Yes (note 1)	Yes	1. 4-hour rolling average utilization across all of the z/TPF Guest Systems that supply SCRT89 records, plus 2. the 4-hour rolling average LPAR utilization across all of the z/TPF Guest LPARs that have shared engines and do not supply SCRT89 records, plus 3. the maximum capacity of all of the z/TPF Guest LPARs that have dedicated engines and do not supply SCRT89 records
No	Yes without SCRT89 records from every guest system	No	Full machine capacity
Yes without SCRT89 records	No	No	
Yes without SCRT89 records	Yes without SCRT89 records from every guest system	No	

Note 1: Customer must either provide the SCRT89 records for all of the z/TPF Guests within an LPAR, or Customer must not provide any SCRT89 records for any of the z/TPF Guests in that LPAR. This requirement applies on an LPAR by LPAR basis.

Note 2: Customer must provide the SCRT89 records for all of the z/TPF Guests running on the machine.

APPENDIX Q IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES

APPENDIX Q. IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES.....1

IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES 1

APPENDIX Q. IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES

IBM SYSTEM Z ADVANCED WORKLOAD LICENSE CHARGES

1. **Eligible Operating Systems**

   z/OS 5694-A01

   z/TPF 5748-T15 (z/TPF does not support the capping function.)

2. **Eligible Machines**

   For product information, see
   http://ibm.com/systems/z/swprice/reference/exhibits/hardware.html

   (See Machines with an (A) in the WLC column.)

3. **Applicable Coupling Facilities**

   Standalone Coupling Facilities on a System z, as listed in the Machines column of the Standalone Coupling Facilities section on
   http://ibm.com/systems/z/swprice/reference/exhibits/hardware.html

   System z Machines in which LPARs may be configured to act as Coupling Facilities as listed on http://ibm.com/systems/z/swprice/reference/exhibits/hardware.html. Machines which qualify are designated by the letters "CF" in the Coupling Facility column.

   Both of these require the Machine running the Coupling Facility control code.

4. **Systems Enablement Functions**

   a. Application Data Sharing including:

      IMS TM: with IMS DB or DB2

      CICS: with IMS DB or DB2 or VSAM RLS

      TSO and DB2 data sharing

      ADAPLEX+ (A product of Software AG)

      ORACLE7 Parallel Server for MVS (A product of Oracle Corp)

      CA-IDMS Rel 14.0 (A product of Computer Associates Corp)

      CA-Datacom Rel 9.0 (A product of Computer Associates Corp)

   b. GRS Star Implementation

   c. JES2 Checkpoint in the Coupling Facility

   d. RACF database caching

   e. SmartBatch multisystem processing

f. VTAM Generic Resources

g. VTAM MULTINODE Persistent Sessions

h. Automated tape sharing and switching

i. System logger SYSLOG (OPERLOG)

j. System logger LOGREC

k. System logger Resource Recovery Services

l. WebSphere MQ shared message queues

m. HSM common recall queues

n. Enhanced catalog sharing

5. Date that Customer will transmit the Sub-Capacity Reports to IBM per the process below:

Second, but not later than the ninth, calendar day of the month.

6. E-mail address for transmitting Sub Capacity Reports to IBM:

US Federal: fednotes@us.ibm.com or eswfed@us.ibm.com

APPENDIX R EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z

APPENDIX R. EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z 1

EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z.....1

APPENDIX R. EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z

EFFECTIVE DATE: JANUARY 9, 2007

EXHIBIT FOR ZNALC LICENSE CHARGES ON IBM SYSTEM Z

1. Applicable Coupling Facilities

Standalone Coupling Facilities on a System z, as listed in the Machines column of the Standalone Coupling Facilities section on http://www.ibm.com/zseries/library/swpriceinfo/

System z Machines in which LPARs may be configured to act as Coupling Facilities as listed on http://www.ibm.com/zseries/library/swpriceinfo/. Machines which qualify are designated by the letters "CF" in the Coupling Facility column.

Both of these require the Machine running the Coupling Facility control code.

2. Systems Enablement Functions (for aggregation)

1. Application Data Sharing are:
   (a) IMS TM: with IMS DB or DB2
   (b) CICS: with IMS DB or DB2 or VSAM RLS
   (c) TSO and DB2 data sharing
   (d) ADAPLEX+ (A product of Software AG)
   (e) ORACLE7 Parallel Server for MVS (A product of Oracle Corp)
   (f) CA-IDMS Rel 14.0 (A product of Computer Associates Corp)
   (g) CA-Datacom Rel 9.0 (A product of Computer Associates Corp)
2. GRS Star Implementation
3. JES2 Checkpoint in the Coupling Facility
4. RACF database caching
5. SmartBatch multisystem processing
6. VTAM Generic Resources
7. VTAM MULTINODE Persistent Sessions
8. Automated tape sharing and switching
9. System logger SYSLOG (OPERLOG)
10. System logger LOGREC
11. System logger Resource Recovery Services

12. WebSphere MQ shared message queues
13. HSM common recall queues
14. Enhanced catalog sharing

3. Date that Customer will transmit the Sub-Capacity Reports to IBM per the process below:

Second, but not later than the ninth, calendar day of the month.

4. To determine the process for transmitting Sub-Capacity Reports to IBM, see the following website:

http://ibm.com/zseries/swprice/scrt

5. E-mail address for transmitting Sub Capacity Reports to IBM:

US Federal: fednotes@us.ibm.com or eswfed@us.ibm.com

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APPENDIX S IBM PASSPORT ADVANTAGE AGREEMENT

APPENDIX S. IBM PASSPORT ADVANTAGE AGREEMENT 1

TERMS AND CONDITIONS 1
1. GENERAL 2
1.1 Appendix Structure 2
1.2 Attachments and Transaction Documents 2
1.3 Definitions 2
1.4 Acceptance of Terms 6
1.5 Payment 7
1.6 Changes to Agreement Terms 7
1.7 Eligible Products 7
1.8 Intellectual Property Protection 7
1.9 General Principles of Our Relationship 7
1.9.1 Notices and Communications 7
1.9.2 Compliance with Laws 8
1.9.3 Other Principles of Our Relationship 8
1.9.4 Assignment and Transferability 9
1.10 Termination 9
1.11 Compliance Verification 9
1.11.1 Resolution 9
2. WARRANTIES 10
2.1 Warranty for IBM Programs 10
2.2 Warranty for IBM Software Subscription and Support and Selected Support 10
2.3 Warranty for IBM Machine Components of IBM Appliances 10
2.4 Warranty for IBM SaaS 11
2.5 Extent of Warranty 11
3. PROGRAMS AND SUBSCRIPTION AND SUPPORT 11
3.1 IBM Programs 12
3.1.1 Versions and Platforms 12
3.1.2 IBM Trade-ups 12
3.1.3 Competitive Trade-ups 12
3.1.4 Money-back Guarantee 12
3.1.5 Conflict between the Terms of this Agreement and those of the IPLA 12
3.2 Programs in a Virtualization Environment 13
3.2.1 Authorizations 13
3.2.2 IBM's Responsibilities 13
3.2.3 Government Customer's Responsibilities under Sub-Capacity Licensing Terms 13
3.2.4 Additional Terms 15
3.3 Fixed Term Licensing 15
3.3.1 Renewal of Fixed Term Licenses 15
3.3.2 Anniversary Coordination 15
3.3.3 Withdrawal of Fixed Term License for a particular Program 15
3.4 Software Subscription and Support and Selected Support 16
3.4.1 Software Subscription and Support 16

3.4.2 Selected Support 17
3.4.3 Government Customer Data and Databases 18
3.4.4 Annual Renewal of Software Subscription and Support and Selected Support 18
3.4.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program 19
4. APPLIANCES 19
4.1 Virtual Appliance 19
4.2 Appliances Comprising Both Program and Machine Components 19
4.3 Program Components 20
4.4 Machine Components 20
4.4.1 Production Status 20
4.4.2 Title and Risk of Loss 20
4.4.3 Installation 20
4.4.4 Machine Code Component 21
4.4.5 Delivery 22
4.4.6 Acceptance 22
5.0 IBM SAAS 22
5.1 Ownership 23
5.2 Government Customer's Right to Use 23
5.3 Subscription to IBM SaaS 24
5.3.1 Terms for a Specific IBM SaaS Offering 24
5.3.2 IBM SaaS Subscription Period 24
5.3.3 IBM SaaS Subscription Period Renewal 24
5.3.4 IBM SaaS Technical Support 24
5.3.5 Content 25
5.3.6 Termination of IBM SaaS 25

APPENDIX S. IBM PASSPORT ADVANTAGE AGREEMENT

TERMS AND CONDITIONS

Note: These terms are in addition to those described in Chapter 1, General Information, Chapter 5, Perpetual Software License (SIN 132-33), and Chapter 9, Electronic Commerce Services (SIN 132-52).

The Passport Advantage terms and conditions ("Agreement") governs transactions by which the Government acquires Eligible Products. The Originating U.S. Government Customer and IBM agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both the Originating U.S. Government Customer and IBM are bound by its terms. Both the Originating U.S. Customer and IBM agree to distribute these terms and conditions within their respective participating Enterprise. The Originating U.S. Government Customer is responsible for all Sites' compliance with the terms of this Agreement. The terms and conditions of this Agreement will prevail in lieu of any other IBM Commercial International Passport Advantage Agreement terms and conditions included in the documentation provided by IBM when the Government Customer enrolls in Passport Advantage.

The GSA Schedule terms and conditions of this Appendix, Chapter 5, SIN 132-33 Perpetual Software Licenses, Chapter 1, General Information, including any applicable Attachments, Chapter 9, SIN 132-52 Electronic Commerce Services - IBM Software as a Service Terms, and any Transaction Documents is the complete agreement (hereinafter referred to as "Agreement") regarding transactions by which the Government Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between the Government Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Appendix, Attachments, SaaS Terms of Use (as described in Chapter 9, SIN 132-52), and Transaction Documents, the conflict shall be resolved by giving precedence in the following order:

(a) the terms of a Transaction Document

(b) the Terms of Use

(c) the terms of an Attachment to this Agreement

(d) the terms of this Agreement

The terms of this Agreement are effective on the day IBM accepts a fully funded Delivery Order for Eligible Products. Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or a Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

1. General

1.1 Appendix Structure

This Appendix is organized in five Parts:

Part 1 – General

Part 2 – Warranties

Part 3 – Programs and Subscription and Support

Part 4 – Appliances

Part 5 – IBM SaaS

1.2 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a quote/proposal, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. Government Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

Additional Site – Any Site within the Enterprise that subsequently enrolls under Passport Advantage.

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a "Virtual Appliance") or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Government Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool ("ILMT"), or by another method acceptable to IBM as specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html. These reports provide the Processor Value Unit ("PVU") license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Government Customer and any user authorized by Government Customer.

Government Customer – the Government Customer Enterprise that is ordering Eligible Products.

Originating U.S. Government Customer – the agency or affiliated entity of the U.S. Government awarding a contract and subsequent Purchase Orders under such contract. This Government Customer is the legal entity that is authorized to execute and administer this Agreement.

Government Customer-set-up Machine Component – an IBM Machine Component that Government Customer is responsible for installing according to instructions provided with it.

Date of Installation

a. for a Government Customer-set-up Machine Component, the date on Government Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM informs Government Customer otherwise.

b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Government Customer defers installation, makes it available to Government Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts the Government Customer's initial delivery order for Eligible Products.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Government Customer's use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html. An Eligible

Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Enabling Software – any Program and associated materials provided to Government Customer by IBM or a third party as part of the IBM SaaS offering in order to facilitate access to and use of IBM SaaS

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise –the agency or affiliated entity of the U.S. Government awarding a contract and subsequent Delivery Orders under such contract. This Government Customer is the legal entity that is authorized to execute and administer this Agreement

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Originating Company – the legal entity within International Business Machines Corporation's Enterprise that accepts the Originating U.S. Government Customer's orders.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Government Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Government Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Government Customer's IBM SaaS account and provided by Government Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See IBM Software Subscription and Support for further description.

IPLA – IBM's Program License Agreement. The IPLA terms and conditions are described in Chapter 5 of this GSA Schedule.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at http://www.ibm.com/software/sla/. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in

the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Government Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Originating Site – any location of a U.S. Government Customer issuing IBM a Delivery Order hereunder for the Government Customer's own internal use.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Government Customer's behalf.

Privacy Practice – the Privacy Practice, located on the Internet at www.ibm.com/privacy, and any subsequent modification.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibmcom/software/lotus/passportadvantage/pvu_licensing_for_Government Customers.html.

Program – 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.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Government Customer's matching paid invoice or receipt, is evidence of Government Customer's level of authorized use.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user Government Customers, either directly or through a reseller.

Site – any defined entity of the Originating Site, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Government Customer's Enterprise and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Government Customer as specified in the Government Customer's Delivery Order.

Term – the period that begins either on the date IBM accepts the Government Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to the Government Customer. IBM's Software as a Service Offerings and SaaS Terms of Use are described in Chapter 9, section 2. .

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See the section titled Software Subscription and Support for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html.

1.4 Acceptance of Terms

By issuing a Delivery Order, the Originating U.S. Government Customer accepts the terms of this Agreement without modification.

An Eligible Product becomes subject to this Agreement when IBM accepts the Government Customer's Delivery Order by i) sending Government Customer a Transaction Document, ii) making the Program or IBM SaaS available to Government Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document provided with IBM's quote/proposal will be considered as accepted upon issuance of a Government Customer's delivery order.

Delivery

For Programs IBM provides to the Government Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by the Government Customer and IBM.

1.5 Payment

a. Is due in accordance with the Prompt Payment Act.

b. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.6 Changes to Agreement Terms

Changes to terms of the Agreement shall be mutually agreed to in writing. Delivery Orders issued hereunder shall be subject to the Agreement terms and conditions in effect at the time of the Order.

1.7 Eligible Products

IBM may add or withdraw Eligible Products at any time. If IBM withdraws an Eligible Product from marketing, the Government Customer will no longer be able to acquire it under this Agreement.

If IBM withdraws a Program or a version of a Program from marketing, the Government Customer 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.

1.8 Intellectual Property Protection

For purposes of this the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component. IBM's Patent and Copyright Indemnity Clause is described in Chapter 1.

1.9 General Principles of Our Relationship

1.9.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business

relationship arising out of this Agreement, and such communications are acceptable as a signed writing. 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.

1.9.2 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Government Customer's business, including those relating to Eligible Products that Government Customer acquires under this Agreement, or that IBM's provision of or Government Customer's receipt of particular Eligible Products under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.9.3 Other Principles of Our Relationship

a. The Government Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Government's decision to implement any recommendation concerning Government Customer's business practices and operations.

b. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

c. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

d. As reasonably required by IBM to fulfill its obligations under this Agreement, the Government Customer agrees to provide IBM with sufficient and safe access (including remote access) to Government Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Government Customer's delay in providing such access or performing other Government Customer responsibilities under this Agreement.

e. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Government Customer may achieve.

1.9.4 Assignment and Transferability

The Government may not assign these PA terms in whole or in part to any third party outside the US Government, without IBM's prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent.

Eligible Products the Government obtains under these PA terms may not be resold, rented, leased, or transferred to third parties. These licenses may only be transferred within a Site (refer to definition of Site above), unless otherwise agreed to by IBM. The transfer of the license rights and obligations outside of a Site terminates the Licensee's authorization to use the Program under the PoE. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

1.10 Termination

IBM may terminate the Passport Advantage Offering on three months' written notice. If a Government Customer acquired or renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM may either continue to provide IBM Software Subscription and Support to Government Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Government Customer a prorated refund. If Government Customer acquired or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to Government Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Government Customer may obtain a prorated refund.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

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

1.11 Compliance Verification

In addition to the Compliance Verification terms provided in Chapter 5, Special Item 132-33, Perpetual Software License, the following terms apply to this Passport Advantage offering.

For purposes of this (Compliance Verification), "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and SaaS Terms of Use (described in Chapter 9)

1.11.1 Resolution

IBM will notify Government Customer in writing if any such verification indicates that Government Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the terms of this Appendix S. Government Customer agrees to

promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

2. WARRANTIES

2.1 WARRANTY FOR IBM PROGRAMS

The warranty for an IBM Program is stated in its license agreement. The warranty details are described in Chapter 5 of this GSA Schedule, IBM Program License Agreement (IPLA) terms and conditions.

2.2 WARRANTY FOR IBM SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 WARRANTY FOR IBM MACHINE COMPONENTS OF IBM APPLIANCES

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Government Customer may return it to the party from whom Government Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Government Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Government Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Government Customer may request that IBM restore it to an acceptable condition for warranty service or Government Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Government Customer is unable to resolve the problem with the service documentation, contact IBM to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Government Customer does not register the IBM Machine Component with IBM, Government Customer may be required to present proof of purchase as evidence of Government Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use. IBM's SaaS Terms of Use are described in Chapter 9, section 2 of this GSA Schedule.

2.5 Extent of Warranty

THESE WARRANTIES ARE GOVERNMENT CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Government Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Government Customer.

3. Programs and Subscription and Support

To acquire additional authorizations to use Programs under this Agreement, the Government Customer must have already acquired the Program code.

3.1 IBM PROGRAMS

IBM Programs acquired under this Agreement are governed by the terms of the IPLA as described in Chapter 5, Perpetual Software License SIN 132-33 of this GSA Schedule.

3.1.1 VERSIONS AND PLATFORMS

Government Customer may use Programs and their associated user documentation in accordance with the terms of this Agreement in any commercially available national language version up to the level of use authorized in the PoE. Government Customer is authorized to use the Program(s) that Government Customer acquires under this Agreement on any platform or operating system for which IBM currently makes Program code available under this Agreement unless the Program is designated as platform or operating system specific at the time Government Customer acquired it.

3.1.2 IBM TRADE-UPS

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Government Customer agrees to terminate Government Customer's use of the replaced IBM Programs when Government Customer installs the replacement Programs.

3.1.3 COMPETITIVE TRADE-UPS

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Government Customer agrees to terminate Government Customer's use of the replaced Non-IBM Programs when Government Customer installs the replacement Programs.

3.1.4 MONEY-BACK GUARANTEE

The IPLA's "money-back guarantee" only applies the first time Government Customer licenses the IBM Program. If an IBM Program license is for a Fixed Term that is subject to renewal, Government Customer may obtain a refund only if Government Customer returns the Program and its PoE within the first 30 days of its initial term. The IPLA's "money-back guarantee" does not apply to a Program Component of an Appliance.

3.1.5 CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND THOSE OF THE IPLA

If there is a conflict between this Appendix S terms including its Attachments and Transaction Documents and those of the IPLA, including its LI, the terms of this Appendix S prevail. The LIs are available on the Internet at http://www.ibm.com/software/sla.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.

b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Government Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Government Customer to use:

a. the ILMT at no charge, when ordered by Government Customer or Government Customer's IBM Reseller. IBM provides the ILMT to Government Customer for Government Customer's compliance with these Sub-Capacity Licensing terms; and

b. the information center included with the ILMT to aid Government Customer's compliance with these Sub-Capacity Licensing terms.

Government Customer may make copies of the ILMT and information center for Government Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Government Customer's Responsibilities under Sub-Capacity Licensing Terms

Government Customer agrees to:

a. install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Government Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Government Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

   (1) when ILMT does not yet provide support for the Eligible Virtualization Environment

   (2) if Government Customer's Enterprise has fewer than 1,000 employees and contractors, Government Customer is not a Service Provider, and Government Customer has not contracted with a Service Provider to manage Government Customer's Eligible Virtualization Environment

(3) if the total physical capacity of Government Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.

(4) when Government Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Government Customer is required to manually manage and track Government Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Government Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html. These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Government Customer must subscribe to Tivoli Support notifications via http://www.ibm.com/support/mynotifications in order to be notified when these become available;

c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:

(1) ILMT audit records;

(2) ILMT, except for changes provided by IBM; or

(3) Audit Reports that Government Customer submits to IBM.

d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less that two years the Audit Reports and make these reports available to IBM upon notice as specified in Section Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;

e. assign a person in Government Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;

f. promptly place an order with IBM if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Government Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Government Customer exceeded Government Customer's authorized level.

3.2.4 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3 Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Government Customer's 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.

3.3.1 Renewal of Fixed Term Licenses

The Government Customer may renew Government Customer's expiring Fixed Term License by issuing IBM a funded Delivery Order prior to the expiration date, in accordance with the terms of this Agreement.

If Government Customer chooses not to renew the Fixed Term License, Government Customer agrees to discontinue use of the Program on the expiration date.

If, after the expiration date, Government Customer chooses to resume use of the Program, Government Customer must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

3.3.2 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 pro-rated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.3 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Government Customer understands that

a. Government Customer may not renew the Fixed Term License for that IBM Program; and

b. if Government Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Government Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 Software Subscription and Support and Selected Support

3.4.1 Software Subscription and Support

a. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support. IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA. IBM Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for (i) Non-IBM Programs or for (ii) Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").

b. 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.

c. While IBM Software Subscription and Support is in effect for an IBM Program license:

   (1) IBM will make available to the Government Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.

   (2) IBM will make available to the Government Customer and authorize the Government Customer to use the most current commercially available version, release, or update, should any be made available.

   (3) IBM provides the Government Customer assistance for Government Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Government Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at http://www.ibm.com/software/info/supportlifecycle/.

   (4) IBM provides Support via electronic access and, if available, telephone, only to Government Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Government Customer's IBM support center. (This assistance is not available to Government Customer's 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 http://www.ibm.com/software/support.

   (5) IBM may request that the Government Customer allow it to remotely access Government Customer's system to assist Government Customer in isolating the software problem cause. Government Customer remains responsible for adequately protecting Government Customer's system and all data contained in it whenever IBM remotely accesses it with Government Customer's permission.

d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Government Customer's 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.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A GOVERNMENT CUSTOMER'S SITE, GOVERNMENT CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A GOVERNMENT CUSTOMER SITE.

GOVERNMENT CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.4.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH GOVERNMENT CUSTOMER HAS NOT FULLY FUNDED FOR IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF GOVERNMENT CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY FUNDED, THEN GOVERNMENT CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.4.2 Selected Support

Selected Programs eligible for Selected Support are listed at http://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:

a. IBM will make available to Government Customer Selected Program defect corrections, if any, that it develops.

b. IBM provides Government Customer assistance for Government Customer's 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, Government Customer 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.

c. IBM may provide Government Customer with assistance in designing and developing applications based on Government Customer's subscription level.

d. IBM may provide assistance via electronic access and, if available, telephone, depending on Government Customer's location and the subscription level Government Customer acquires. Such assistance is provided only to Government Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Government Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at http://www.ibm.com/software/support.

e. IBM may request that Government Customer allow it to remotely access Government Customer's system to assist Government Customer in isolating the software problem cause. Government Customer remains responsible for adequately protecting Government Customer's system and all data contained in it whenever IBM remotely accesses it with Government Customer's permission.

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

3.4.3 Government Customer Data and Databases

To assist Government Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Government Customer 1) allow IBM to remotely access Government Customer's system or 2) send Government Customer information or system data to IBM. 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, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Government Customer is located), and Government Customer authorizes IBM to do so.

Government Customer remains responsible for 1) any data and the content of any database Government Customer 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. Government Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.4.4 Annual Renewal of Software Subscription and Support and Selected Support

The Government Customer may renew its expiring software subscription and support or Selected Support by providing IBM with a fully funded Delivery Order for the subsequent Term.

Software subscription and support or Selected Support acquired or renewed on the Anniversary is renewable for an additional term of 12 full months.

Software subscription and support or Selected Support acquired on a date other than the Anniversary is renewable at the next Anniversary for an additional term of less than 12 full months for a pro-rated charge, thereby extending the coverage to the following Anniversary.

To reinstate any expired software subscription and support coverage, Government Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.4.5 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, Government Customer understands that

a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and

b. if Government Customer 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 may either continue to provide IBM Software Subscription and Support or Selected Support to Government Customer for that Program license until the end of the then current term or Government Customer may obtain a prorated refund. If Government Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Government Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Government Customer may obtain a prorated refund.

4. Appliances

4.1 Virtual Appliance

Government Customer is licensed to use the Program(s) pursuant to the terms of this Appendix.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Government Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Government Customer is licensed to use the Program Component(s) pursuant to the terms of this Appendix, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Government Customer by IBM or an authorized reseller. Government Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is will be newly manufactured and may contain some serviceable used parts and/or features. Regardless, IBM's applicable warranty terms described above apply.

4.4.2 Title and Risk of Loss

When IBM accepts the Government Customer's order, IBM agrees to sell Government Customer the Machine Component described in a Transaction Document. IBM transfers title to the Government Customer or, if applicable, Customer's lessor when the Machine Component is shipped to Government Customer or its designated location.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Government Customer or Government Customer's designated location. Thereafter, Government Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Government Customer, covering the period until it is delivered to Government Customer or Government Customer's designated location. For any loss or damage, Government Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

(1) Government Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.

(2) Government Customer is responsible for installing a Government Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.

(3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it

considers a Machine Component (other than a Machine Component for which Government Customer defers installation or a Government Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

(1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Government Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Government Customer must return the Upgrade at Government Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.

(2) Government Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Government Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Government Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Government Customer represents that Government Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Government Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Government Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL: http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Government Customer has acquired IBM's written authorization. Government Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further

authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Government Customer may not

a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Government Customer;

b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;

c. sublicense or assign the license for the Machine Code Component; or

d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Government Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document.

4.4.6 Acceptance

Appliances: the acceptance date is the date of delivery to the location designated on the Delivery Order

Notwithstanding anything herein to the contrary, the parties agree as follows:

(i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

5.0 IBM SaaS

Government Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Government Customer remains responsible for Internet access.

Government Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.14.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between the Government Customer and IBM.

5.1 Ownership

IBM and its suppliers own IBM SaaS. Government Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

5.2 Government Customer's Right to Use

Government Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

a. Government Customer accepts the Terms of Use of the IBM SaaS offering;

b. Government Customer ensures that anyone who uses the IBM SaaS offering does so only on Government Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and

c. Government Customer does not

   (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

   (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;

   (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;

   (4) rent, sublicense, or lease the IBM SaaS offering;

   (5) create Internet "links" to or from the IBM SaaS offering; or

   (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Government Customer's own intranets in connection with Government Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions. See Chapter 9 for the Terms of Use that apply to IBM's SaaS offerings.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM receives a fully funded Delivery Order, or at a later date as specified in the Delivery Order. The end date of a Subscription Period as specified in the Government Customer's delivery order or in an IBM Transaction Document must be the last day of a month.

During an IBM SaaS Subscription Period, Government Customer may increase or decrease the subscribed level of an IBM SaaS offering. IBM will provide monthly reports identifying the Government Customer's usage and the percentage of remaining funds available on the delivery order. The Government Customer is responsible for monitoring this report, the funds remaining on the current order, and issue a modification to increase the funds available as appropriate. Notwithstanding the requirement for a modification to increase funds, the Government Customer remains responsible for paying invoices for monthly provisioning and usage.

5.3.3 IBM SaaS Subscription Period Renewal

The Government Customer may renew an IBM SaaS offering at the end of a Subscription Period by providing IBM with a funded delivery order prior to the end of the Subscription Period. If a renewal order is received by IBM with a coverage commencement date later than the first day following the end date of the prior Subscription Period, the Government Customer shall promptly modify the order to reflect the day following the end date of the of the prior Subscription Period.

5.3.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

a. IBM provides assistance, as specified in the ToU, for Government Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and

b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.3.5 CONTENT

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Government Customer has sole responsibility for the following:

a. ensuring the adequacy of any IBM SaaS elements to satisfy any Government Customer requirements:

b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;

c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Government Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Government Customer retains all right, title, and interest in and to its Content; and

d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Government Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.3.6 TERMINATION OF IBM SAAS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Government Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Appendix, IBM may terminate the Government Customer's access to the IBM SaaS due to Government Customer's breach of any of the applicable terms of this Appendix. Upon termination, the Government Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event the Government Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within your possession or control.