IBM Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

1. General

1.1 Agreement Structure

This Agreement is organized in five Parts:


Part 2 - Warranties defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

Part 3 - Machines includes Machine terms regarding Production Status, Title and Risk of Loss, Installation, and Machine Code.

Part 4 - ICA Programs includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

Part 5 - Services includes Services terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. 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.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.3 Definitions

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and

c. for a Program --

(1) basic license, the second business day after the Program's standard transit allowance period,

(2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and

(3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.
Designated Machine – either i) the machine on which Customer will use an ICA Program for processing and which IBM requires Customer to identify to IBM by type/model and serial number, or ii) any machine on which Customer uses the ICA Program if IBM does not require Customer to provide this identification.

Enterprise – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term “Enterprise” applies only to the portion of the Enterprise located in the United States.

IBM Machine – a Machine bearing an IBM logo.

IBM Product – an IBM Machine, ICA Program, or Other IBM Program.

ICA Program – an IBM Program licensed under Part 4 of this Agreement.

Licensed Internal Code (called “LIC”) – Machine Code used by certain IBM Machines IBM specifies (called “Specific Machines”).

Machine – a hardware device, 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 to Customer.

Machine Code – 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 for the purpose of enabling the Machine’s function as stated in its Specifications. The term "Machine Code" includes LIC.

Materials – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The term “Materials” does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Non-IBM Program – a Program licensed under a separate third party license agreement.

Other IBM Program – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Product – a Machine or a Program.

Program – the following, including the original and all whole or partial copies:

a. machine-readable instructions and data;
b. components;
c. audio-visual content (such as images, text, recordings, or pictures); and
d. related licensed materials.

The term “Program” includes any ICA Program, Other IBM Program, or Non-IBM Program that IBM may provide to Customer. The term does not include Machine Code or Materials.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the machines and programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer’s order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Delivery dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM
provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Charges and Payment

1.6.1 Charges

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply subject to mutual agreement between the parties. IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.6.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges (for example, change authorized capacity for Machines or change processor size or configuration for Programs), Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM’s receipt of the order:

a. IBM ships Customer the Machine or makes the Program available to Customer;

b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or

c. a Program's increased use charge becomes due.

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

1.6.4 Payment

Amounts are due upon receipt of invoice and payable as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee as allowed in section 3.8.2 of the Illinois Master
Software and Services Agreement. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.6.5 Taxes

1.7 Changes to the Agreement Terms
In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

1.8 IBM Business Partners
Section removed by Agreement of the Parties.

1.9 Intellectual Property Protection
For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

1.9.1 Third Party Claims

1.9.2 Remedies

1.9.3 Claims for Which IBM is Not Responsible

1.10 Limitation of Liability
1.10.1 Items for Which IBM May Be Liable

1.10.2 Items for Which IBM is Not Liable

1.11 General Principles of Our Relationship
1.11.1 Notices and Communications
Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. 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.

1.11.2 Assignment and Resale
See Illinois Master Software and Services Agreement section 2.5.1.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire Machines with the intent to use them within its Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies:
a.  Customer is arranging lease-back financing for the Machines; or
b.  Customer purchases the Machines without any discount or allowance, and does not remarket them in competition with IBM's authorized remarketers.

1.11.3 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 Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

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

1.11.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

1.11.5 Other Principles of Our Relationship

a.  Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.


c.  Each party is free to enter into similar agreements with others.

d.  Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.


g.  Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.

h.  Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

i.  Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

j.  As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to 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 Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.12 Agreement Termination


1.13 Geographic Scope and Governing Law

2. **Warranties**

2.1 **The IBM Warranties**

2.1.1 **Warranty for IBM Machines**

See Illinois Master Software and Services Agreement Section 2.9.

2.1.2 **Warranty for ICA Programs**

2.1.3 **See Illinois Master Software and Services Agreement Section 2.9.1 Warranty for IBM Services**

See Illinois Master Software and Services Agreement Section 2.9.4.

2.1.4 **Warranty for Systems**

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer 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.

2.2 **Extent of Warranty**

See Illinois Master Software and Services Agreement Section 2.9.1.

3. **Machines**

3.1 **Production Status**

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM’s applicable warranty terms described in Part 2 apply.

3.2 **Title and Risk of Loss**

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, 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.

3.3 **Installation**

3.3.1 **Machine Installation**

Customer 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 it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.3.2 **Upgrades and Engineering Changes**

As used in this section, the term “upgrade” includes, without limitation, features and conversions. IBM sells 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, Customer agrees to install the upgrade or, if IBM is responsible for the installation, to allow IBM to install the upgrade. Otherwise, IBM may terminate the transaction and Customer must return the upgrade at Customer's expense.

Customer 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. Customer is responsible for the return of all removed parts to IBM upon installation of the upgrade or engineering change. As applicable, Customer represents that 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. 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.

3.4 Machine Code

Machine Code 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.

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 Customer has acquired IBM's written authorization. Customer agrees to use Machine Code 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, Customer 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 Customer;

b. reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by applicable 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 the original 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. Customer agrees to IBM's implementation of such technological measures to limit Machine capacity.

4. ICA Programs

4.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

4.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

a. use the ICA Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, Customer may use another machine temporarily. If the Designated Machine cannot assemble or compile the ICA Program, Customer may assemble or compile the ICA Program on another machine.

If Customer changes a Designated Machine previously identified to IBM, Customer agrees to notify IBM of the change and its effective date;

b. use the ICA Program to the extent of authorizations Customer has obtained;

c. make and install copies of the ICA Program, to support the level of use authorized, provided Customer 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 i) provides in source form, or ii) marks restricted (for example, "Restricted Materials of IBM") only to

(1) resolve problems related to the use of the ICA Program, and

(2) modify the ICA Program so that it will work together with other products.
4.1.2 Customer's Additional Obligations
For each ICA Program, Customer agrees to:

a. comply with any additional or different terms in its Licensed Program Specifications or an Attachment or Transaction Document;

b. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and

c. maintain a record of all copies and provide it to IBM at its request.

4.1.3 Actions Customer May Not Take
Customer agrees not to:

a. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or

b. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

4.2 Distributed System License Option
For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

a. have a Basic license for the ICA Program;

b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and

c. distribute, to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

4.3 Program Services
IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's 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 an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

4.4 Compliance Verification
IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with other terms of this Agreement (including applicable Attachments and Transaction Documents) relating to Customer's use of ICA Programs at all sites and for all environments in which Customer installs or uses ICA Programs for any purpose. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and use of ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

4.5 License Termination
Customer may terminate the license for an ICA Program at any time on one month's written notice to IBM.

For ICA Program licenses that Customer acquired for a one-time charge, replacement licenses may be acquired for an upgrade charge, if available. When Customer obtains licenses for these replacement ICA Programs, Customer agrees to terminate the license of the replaced ICA Programs when charges become due, unless IBM specifies otherwise.

IBM may terminate Customer's license if Customer fails to comply with the license terms. If IBM does so, Customer's authorization to use the ICA Program is also terminated.
Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

5. Services

5.1 Personnel

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.

5.2 Materials Ownership and License

See Illinois Master Software and Services Agreement Section 4.7.

5.3 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.

5.4 Service for Machines (during and after warranty)

5.4.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer’s location or a service center. IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer 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 deliver it to Customer at IBM’s expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer’s Machine while it is i) in IBM’s possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;

b. where applicable, before IBM provides Service, to --

   (1) follow the problem determination and service request procedures that IBM provides,

   (2) secure all programs, data, and funds contained in a Machine, and

   (3) inform IBM of changes in a Machine’s location.

c. 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

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

   (1) 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;

(2) 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

(3) 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.

5.4.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes its property and the replacement becomes Customer’s. Customer 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 part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM’s service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. 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. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer’s Machine and at any time on Customer’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 Customer 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.

5.4.3 Items Not Covered

Repair and exchange Services do not cover:

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

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

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

d. failures caused by a product for which IBM is not responsible;

e. service of Machine alterations; or

f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

5.5 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period. Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

5.6 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer’s request.
5.7 Automatic Service Renewal
Section removed upon agreement of the parties.

5.8 Termination and Withdrawal of a Service
See Illinois Master Software and Services Agreement Sections 1.3 and 1.4.

This Agreement and its applicable Attachments and Transaction Documents, including the Illinois Master Software and Services Agreement are the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces any prior oral or written communications between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) estimated completion dates, hours, or charges to provide any Service; ii) performance or function of any Product or system, other than as expressly warranted in Part 2 above; iii) the experiences or recommendations of other parties; or iv) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
Customer Company Name:

By ___________________________ Authorized signature
Title:
Name (type or print):
Date:
Customer number:
Enterprise number:
Customer address:

Agreed to:
International Business Machines Corporation

By ___________________________ Authorized signature
Title:
Name (type or print):
Date:
Agreement number:

IBM address:
International Agreement for Acquisition of Software Maintenance

Part 1- General Terms

This IBM International Agreement for Acquisition of Software Maintenance (called the "Agreement") governs Customer's acquisition of IBM software maintenance ("Software Maintenance"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Maintenance is provided only for those Eligible Programs licensed by Customer within its Enterprise. Acquisition of Software Maintenance in quantities greater than the number for which Customer is licensed does not create or imply any greater license authorization. An "Enterprise" in this Agreement is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. "Eligible Programs" are described below.

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote and market Software Maintenance offerings. When Customer orders Software Maintenance marketed to Customer by IBM Business Partners, IBM will provide Software Maintenance to Customer under the terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to Customer or 3) any products or services that they supply to Customer under their agreements. In the event that Customer's IBM Business Partner is no longer able to market Software Maintenance, for any reason, Customer may continue to receive Software Maintenance under the terms of this Agreement by instructing IBM to transfer administration of Software Maintenance to either 1) another IBM Business Partner of Customer's choice (who may require Customer to first execute one of their agreements) who is approved to market Software Maintenance to Customer, or 2) IBM.

Section 2 of the Agreement contains terms that are specific to a particular hardware platform. The terms in the remaining sections are in addition to those in section 2, and apply to all platforms.

1. Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the International Program License Agreement ("IPLA") unless otherwise specified by IBM. A copy of the IPLA is provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD. Sections of the IPLA entitled "Licensee Data and Databases," "Limitation of Liability," "Compliance Verification," "General," and "Geographic Scope and Governing Law," including any associated Country-unique Terms applicable to those sections are also part of this Agreement, subject to the following:

a. If the IPLA version provided with the IBM Eligible Program is not version 13 or higher (the version number is indicated by the last two digits in the form number—for example, the "13" in Z125-3301-13), then version 13 applies. Customer may obtain a copy of version 13 from IBM or its resellers and on the Internet at www.ibm.com/software/sla; and

b. the following changes:

(1) The terms "Program" and "Program license(s)" are replaced by the term "Software Maintenance."

(2) The term "Licensee" is replaced by the term "Customer."

(3) The phrase "the laws of the country in which Customer acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which Software Maintenance is acquired."

(4) The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which Customer acquired the Program license" in the Jurisdiction subsection is replaced by the statement, "All rights, duties, and obligations of each of the parties are valid only in the country in which Software Maintenance is acquired or, if IBM agrees, the country where Software Maintenance is used."

Capitalized terms used but not defined in this Agreement have the meaning given to them in the IPLA.

2. Software Maintenance

a. For Eligible Programs running on an IBM System z platform or equivalent:
(1) **Eligible Programs**: Programs for which S&S is available are listed at [www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo](http://www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo). Click on IPLA Subscription and Support Addenda.

(2) **S&S Period**: One year. When Customer orders S&S with a Program, the initial S&S Period begins on the date that IBM makes the Program available to Customer.

(3) **Early Termination of an S&S Period for a Program**: While Customer may terminate an S&S Period, IBM does not issue a credit or refund for the unused portion of an S&S Period.

(4) **Automatic Renewal**: If, by the last day of the current S&S Period, IBM has received no written notification from Customer or Customer's Business Partner, as applicable, that Customer does not want to renew S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period.

(5) **S&S Period Adjustment**: When Customer acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, Customer may request that the S&S Period duration is adjusted to end at a month of Customer's choice. If Customer does not choose a date, IBM will inform Customer of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section 3. Charges and Payment below) will be pro-rated accordingly.

(6) **S&S**: During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:

   (a) defect correction information, a restriction, or a bypass;

   (b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and

   (c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the Customer's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support Handbook at [http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html](http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html)

   S&S does not include assistance for 1) the 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 under this Agreement.

   S&S is provided only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

(7) **Resumption Fee**: A charge to resume S&S after Customer either (a) declined S&S at the time Customer acquired the license for a Program or (b) terminated S&S. This charge is equal to the total of all S&S Charges that Customer would have paid during the lapsed interval. An S&S Period in such an instance begins on the date that IBM accepts Customer's order.

(8) **S&S Upgrade**: If Customer upgrades S&S due to an increase in the level of use of an Eligible Program, any increase to the S&S Charge will be pro-rated to the end of the current S&S Period.

b. For Eligible Programs running on IBM distributed platforms (e.g., IBM Power Systems, IBM System i, IBM System p, IBM System x, IBM System Storage, and IBM Retail Store Solutions) or equivalent:

(1) **Eligible Programs**: Unless otherwise provided by IBM, Eligible Programs for which Software Maintenance is available are listed at [www.ibm.com/servers/eserver/zseries/stspsol/subscribe2.htm](http://www.ibm.com/servers/eserver/zseries/stspsol/subscribe2.htm) or may be obtained from Customer's IBM marketing representative or IBM Business Partner.

(2) **Initial Software Maintenance Period**: Customer must choose either one year, the charge for which may be included with the Eligible Program, or, for an additional charge, three years of Software Maintenance at the time Customer orders an Eligible Program. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Customer. If the Eligible Program is part of an IBM Software Maintenance for OS/400, i5/OS, and selected...
Programs, then the Initial Software Maintenance Period duration will be adjusted so that the expiration coincides with that of the other Eligible Programs in the group. In such event, the Initial Software Maintenance Period may be less than one year.

(3) Subsequent Software Maintenance Periods (under this Agreement): One or three years, at Customer's option.

(4) Early Termination of a Software Maintenance Period for a Program: While Customer may terminate a Software Maintenance Period, IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.

(5) Renewal:

(a) It is Customer's responsibility to renew Software Maintenance at the end of each Software Maintenance Period. IBM or Customer's IBM Business Partner will renew expiring Software Maintenance under terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period, if it receives Customer's order to renew (e.g., order form, order letter, purchase order) not later than the expiration date. Subsequent Software Maintenance Periods under this Agreement (or other terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period) begin on the day following the end of the preceding Software Maintenance Period. If Customer does not renew Software Maintenance by the expiration date of the Software Maintenance Period but subsequently wishes to acquire Software Maintenance, a Software Maintenance After License Fee, as set forth below, will apply.

(b) For Eligible Programs running on Power Systems, System i or System p platforms, if the Customer specifies in advance, IBM, even if it does not receive Customer's order to renew, will continue to provide Software Maintenance under terms and charges made available to Customer prior to expiration of the current Software Maintenance Period.

(6) Software Maintenance: During the Software Maintenance Period:

(a) IBM makes available to Customer the most current commercially available version, release, or update to all of the Eligible Programs for which Customer acquires Software Maintenance under this Agreement, should any be made available. For Power Systems, System i, and System p Programs under this Agreement, Customer may obtain upgrades to any more recent commercially available version, release or update. Customer's right to upgrade to a new version, release or update under this subsection may only be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed.

(b) For IBM Software Maintenance for OS/400, i5/OS, and selected Programs, Customer is entitled to upgrade an Eligible Program to a specific version or release only one time per machine, notwithstanding 2.b.(6)(a) above.

(c) IBM provides Customer technical assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

(d) IBM provides assistance via telephone and, if available, electronic access, to only Customer’s information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the Customer's geography. This assistance is not available to Customer’s end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Additional details regarding assistance, including the definition of Severity 1, are provided in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/products/support.html.

(e) Software Maintenance does not include assistance for 1) the design and development of applications, 2) Customer's use of Eligible Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

(f) And only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.
(7) Software Maintenance After License Fee (which may be referred to as "Maintenance After License" or "MAL" in connection with System i platforms and as "After License Charge" or "ALC" in connection with System p platforms):

(a) Software Maintenance After License Fee is the charge to resume Software Maintenance if Customer

(i) did not renew it before the end of the then current Software Maintenance Period; or

(ii) terminated it.

(b) The Software Maintenance Period for a resumption of Software Maintenance begins on the date that IBM accepts Customer's order.

(c) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for OS/400, i5/OS, and selected Programs, unless

(i) the machine has the most current version and release of the appropriate operating system installed; and

(ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.

(d) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for the AIX operating system or AIX selected Programs unless

(i) the machine has a current version and release of the AIX operating system or AIX selected Programs installed and

(ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.

(e) For Software Maintenance for other Eligible Programs not otherwise covered by this subsection 2.b(7), a Software Maintenance After License Fee may apply to Customers acquiring used Power System, System i, or System p machines. Please contact your IBM representative, or where applicable, an IBM Business Partner or IBM Call Center, for further information.

(8) Transfer of IBM Software Maintenance on Power Systems, System i and System p machines:

In addition to the provisions of section 4, "Software Maintenance Transferability" below, Software Maintenance for Programs running on Power Systems, System i or System p platforms

(a) applies to a designated machine (type, model and serial number);

(b) may be transferred only to another machine that is licensed for the same operating system at the same or a more recent release level; and

(c) may incur an increase in the Software Maintenance Charge if the "transferred to" machine is of a larger capacity.

3. Charges and Payment

If Customer returns an Eligible Program for refund as allowed under its license terms, IBM or Customer's IBM Business Partner will terminate, and refund any charges paid for, Software Maintenance ordered with the Program. IBM does not give refunds for Software Maintenance without the return of the associated Eligible Program.

a. Software Maintenance acquired from an IBM Business Partner

When Customer acquires Software Maintenance from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Customer will pay Customer's IBM Business Partner directly.

b. Software Maintenance acquired directly from IBM

(1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.
(2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.

(3) IBM may increase the Software Maintenance Charge without notice. An increase will not apply to Customer if IBM receives Customer’s order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of Customer’s order IBM makes Software Maintenance available to Customer. Customer receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.

(4) Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fee.

(5) If any authority imposes a duty, tax, levy or fee, excluding those based on IBM’s net income, upon Software Maintenance IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

4. Software Maintenance Transferability

Customer may transfer Software Maintenance only to an entity that is within Customer’s Enterprise and located within the country in which Software Maintenance is acquired, provided that the entity receiving the Eligible Program agrees to the terms of this Agreement.

5. Customer’s Responsibilities

Customer agrees that when Customer acquires Software Maintenance for an Eligible Program:

a. Customer will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;

b. Customer is responsible for the results obtained from the use of the Software Maintenance;

c. Customer will, at IBM’s request, allow IBM to remotely access Customer’s system to assist Customer in isolating the software problem cause;

d. Customer remains responsible for adequately protecting Customer’s system and all data contained in it whenever IBM remotely accesses it with Customer’s permission to assist Customer in isolating the software problem cause;

e. Customer will provide sufficient, free, and safe access to Customer’s facilities for IBM to fulfill its obligations; and

f. except as permitted by section 4. Software Maintenance Transferability above, Customer will not assign, or otherwise transfer, this Agreement or Customer’s rights under this Agreement, or delegate Customer’s obligations, without IBM’s prior written consent. Any attempt to do so is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

6. Warranty for Software Maintenance

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

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 IBM is not responsible.

EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION, THESE WARRANTIES ARE 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 SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

7. Changes to Agreement Terms

IBM may change the terms of this Agreement by giving Customer three months’ prior written notice by letter or e-mail, either directly to Customer or through Customer’s IBM Business Partner. These changes are not retroactive and apply, as of the effective date IBM specifies in the notice, only to new orders and renewals.

Otherwise, for a change to be valid, both of us must sign it.

8. Termination and Withdrawal

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.

IBM may withdraw Software Maintenance for an Eligible Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which Customer has prepaid and IBM has not yet fully provided it to Customer, at its sole discretion IBM will either continue to provide Software Maintenance to Customer until the end of the current Software Maintenance Period or give Customer a prorated refund. Acquisition of Software Maintenance does not extend the period for which an Eligible Program is supported.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer’s license for an Eligible Program due to Customer’s breach of any of its terms, IBM may also concurrently terminate Software Maintenance for that Eligible Program. In this instance, IBM is not obligated to issue a refund or credit for any unused portion of Software Maintenance.

IBM may withdraw the Software Maintenance offering in its entirety on 12 months’ written notice to all then current Software Maintenance customers by letter or e-mail.

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

9. Additional Terms

a. To assist Customer in isolating the cause of a software problem, IBM may ask Customer to (1) allow IBM to remotely access Customer’s system or (2) send customer information or system data to IBM. IBM uses information about errors and problems only to improve its products and services and assist with its provision of Software Maintenance. IBM may use subcontractors and IBM Enterprise entities in other countries for these purposes, and Customer authorizes IBM to do so.

Customer remains responsible for (i) any data and the content of any database Customer makes available to IBM, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (iii) backup and recovery of the database and any stored data. Customer will not send or provide to IBM access to personal information and will be responsible for any reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or to the loss or disclosure of such information by IBM, including those arising out of any third party claims.

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

c. Each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. 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.

This Agreement is the complete agreement regarding Customer’s acquisition of Software Maintenance, and replaces any prior oral or written communications between Customer and IBM concerning Software Maintenance. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: 1) performance or function of any product or system, other than as expressly warranted in section 6 above; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Customer accepts the terms of this Agreement without modification by any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or,
where required by law, signing a transaction document. Software Maintenance becomes subject to this Agreement when IBM or Customer's IBM Business Partner accepts Customer's order or payment. Once in effect, 1) unless prohibited by applicable local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and 2) Software Maintenance Customer orders under this Agreement is subject to it.
International Agreement for Acquisition of Software Maintenance

Part 2- Country-unique Terms

AMERICAS

The following terms apply to all Americas countries (except Brazil, Canada and the United States) unless a specific country term states otherwise:

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):

Amounts are due upon receipt of invoice and payable as IBM specifies in a transaction document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

(a) As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a transaction document on the date payment is made.

(b) If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the transaction document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the transaction document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

All additional terms apply to the referenced country.

BRAZIL

2. Software Maintenance

In subsection a. For Eligible Programs running on an IBM System z platform,

items 2 through and including 5 are deleted in their entirety.

In item 6, the phrase “S&S Period” is replaced by the following:

the period for which Customer has paid for S&S

In item 8, the phrase “pro-rated to the end of the current S&S Period” is replaced by the following:

effective on the first day of the following month

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (1):

For Eligible Programs running on IBM distributed platforms or equivalent, charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance. For Eligible Programs running on an IBM System z platform or equivalent, charges for Software Maintenance, called the Software Maintenance Charge, are invoiced monthly in advance.

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (3):

IBM may increase charges for Software Maintenance provided under this Agreement. IBM’s ability to increase such charges is subject to the requirements of Brazilian law.

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a transaction document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the
rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

(a) if payment is made between the 31st day and the 60th day from invoice date, a two percent late payment penalty applied to the resultant delinquent amount, or

(b) if payment is made 61 or more days from invoice date, a ten percent late payment penalty applied to the resultant delinquent amount.

The following is added to subsection b. Software Maintenance acquired directly from IBM as item (6):
Amounts due are expressed in local currency.

The following is added to subsection b. Software Maintenance acquired directly from IBM as item (7):
The charges for Software Maintenance acquired under this Agreement are inclusive of all applicable taxes that are IBM’s responsibility on the base date established in a transaction document. The parties agree that IBM will adjust the charges accordingly should any of the following occur:

(a) any change is made to the rate, form or base of calculation, form of payment, classification or taxes levied on the Software Maintenance or on their costs,

(b) a new applicable tax is created,

(c) any change is made to any other legal aspect related to the taxes applicable on the base date,

(d) any change is made to any other legal aspect related to the taxes applicable on the base date for the Software Maintenance,

(e) any change is made to the location where Services are to be provided, or

(f) any change is made to the manner in which Services are marketed.

7. Changes to Agreement Terms

The following replaces this section in its entirety:

In order to maintain flexibility in our business relationship, the terms of this Agreement may be changed upon execution of an amendment and the changes shall apply as of the effective date specified in the amendment. They apply only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

8. Termination and Withdrawal

The words "or e-mail" in the fourth paragraph of this section are deleted.

9. Additional Terms

In the first sentence of item c, the phrase “and such communications are acceptable as a signed writing” is deleted.

In the clause that begins with “This Agreement is the complete ...”

In the fourth sentence, which begins with “Customer accepts the terms ..., “ the following phrase is deleted:

any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or, where required by law,

In the fifth sentence, which begins with “Software Maintenance becomes subject to this Agreement ...,” the phrase “accepts Customer’s order or payment” is replaced by the following phrase:

accepts Customer’s order by signing it.
ANGUILLA, ANGUILLA, AND BARBADOS, ARUBA, BAHAMAS, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADE, GUYANA, JAMAICA, MONTserrat, NETHERLANDS ANTILLES, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT MARTIN, SAINT VINCENT AND THE GRENADINES, SURINAME, TRINIDAD AND TOBAGO, TURKS AND CAICOS ISLANDS, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, AND PARAGUAY

2. Software Maintenance

The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

IBM will renew, for an additional payment, expiring S&S for all of Customer’s Program licenses for an additional Software Maintenance Period if IBM receives (1) Customer’s order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer’s payment within 30 days of Customer’s receipt of the S&S invoice for the next coverage period.

UNITED STATES OF AMERICA

2. Software Maintenance

The following is added at the end the sentence beginning with “While Customer may terminate an S&S Period …” in (3) Early Termination of an S&S Period for a Program in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

unless the S&S Period was renewed under the provisions of subsection 4, Automatic Renewal (below). In such event, Customer may obtain a credit, prorated to the end of that S&S Period from the first day of the month following the later of (a) IBM’s receipt of Customer’s termination request or (2) Customer’s requested date of termination, through the end of that S&S Period.

ASIA PACIFIC

AUSTRALIA

3. Charges and Payment

The following paragraph is added after item b:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax (“GST”).

The following paragraph replaces item b(5) in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Software Maintenance itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

The warranties specified in this section are in addition to any rights Customer may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

CAMBODIA, LAOS, PEOPLE’S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL

2. Software Maintenance

The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

IBM will renew, for an additional payment, expiring S&S for all of Customer Program licenses for an additional S&S Period if IBM receives (1) Customer’s order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer’s payment within 30 days of Customer’s receipt of the S&S invoice for the next coverage period.
HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word “country” (for example, “country of acquisition” and “country of installation”) are replaced with the following:

(1) In Hong Kong SAR: “Hong Kong SAR”
(2) In Macau SAR: “Macau SAR” except in the Governing Law clause (section 14.1)
(3) In Taiwan: “Taiwan.”

INDONESIA

8. Termination and Withdrawal

The following paragraph is added between the first and second paragraphs:

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

8. Termination and Withdrawal

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior notice.

NEW ZEALAND

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

The warranties specified in this Part are in addition to any rights Customer may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if Customer requires the goods or services for the purposes of a business as defined in that Act.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EUROPEAN UNION MEMBERS

6. Warranty for Software Maintenance

For European Union Member States the following is added to Section 6:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods and services. Such rights are not affected by the provisions set out in this Section 6 Warranty for Software Maintenance.

AUSTRIA

6. Warranty for Software Maintenance

This Section 6. Warranty for Software Maintenance is amended as specified for GERMANY.

FRANCE

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM the following is added to the end of item (3).

If Customer disagrees with the increase, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM’s notification to Customer of the increase.

GERMANY

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, item (3), "three months" is replaced with "four months."
6. Warranty for Software Maintenance

For Germany (and Austria) the following replaces Section 6. Warranty for Software Maintenance in its entirety.

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action. IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, Customer may with respect to that defect, at Customer’s choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, instant termination ("Kündigung") of this Agreement. In case of minor defects or deviations, Customer shall not be entitled to terminate the Agreement.

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 IBM is not responsible.

Without prejudice to Customer’s rights under other warranty provisions of the Agreement, IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

9. Additional Terms

The following paragraph is added as the last paragraph of subsection a:

When assisting Customer in isolating the cause of a software problem, should IBM access Customer’s personally-identifiable data upon Customer’s request, "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG" applies.

IRELAND and UNITED KINGDOM

6. Warranty for Software Maintenance (Ireland only)

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the “1980 Act”), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

Entire Agreement

The following sentence is added to the second from last paragraph of Part 1:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.
International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN “ACCEPT” BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO 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 WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" – the specified level at which Licensee 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" ("PoE") – evidence of 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. If IBM does not provide 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 Licensee obtained the Program, 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.

2. Agreement Structure

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee’s use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold. IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
b. the backup copy does not execute unless the backed-up Program cannot execute;
c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
d. Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use
any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

3.1 Trade-ups, Updates, Fixes, and Patches

3.1.1 Trade-ups
If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

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

3.2 Fixed Term Licenses
If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

3.3 Term and Termination
This Agreement is effective until terminated.
IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.
If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Charges
Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.
If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

5. Taxes
If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes 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 original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

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

Licensee may transfer the Program and all of Licensee’s license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program’s Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee’s license terminates.

8. **Warranty and Exclusions**

8.1 **Limited Warranty**

See Illinois Master Contract Section 2.9.2.

8.2 **Exclusions**

See Illinois Master Contract Section 2.9.2.

9. **Licensee Data and Databases**

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee’s system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM’s warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, 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.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, 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.

10. **Limitation of Liability**

See Illinois Master Contract Section 4.8.5.

10.1 **Items for Which IBM May Be Liable**

See Illinois Master Contract Section 4.8.5.

10.2 **Items for Which IBM Is Not Liable**

a. See Illinois Master Contract Section 4.8.5.

11. **Compliance Verification**

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

11.1 **Verification Process**

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee’s use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM’s applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee’s compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms.
Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

11.2 Resolution
IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 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 and other liabilities determined as a result of such verification.

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

13. General
a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.

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

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


f. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.

g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

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

i. Third Party Claims. See Illinois Master Software and Services Agreement section 4.21. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.

j. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.
k. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

14. Geographic Scope and Governing Law

14.1 Governing Law


14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.
Amendment for IBM System z Programs Sub-Capacity Pricing

These terms modify or are in addition to the IBM International Program License Agreement ("IPLA").

Subject to the terms of this Amendment for IBM System z Programs Sub-Capacity Pricing ("Amendment"), IBM enables Customer to obtain Sub-Capacity Pricing for certain System z IPLA Programs ("Eligible Programs"). Eligible Programs are specified at http://ibm.com/systems/z/swprice/reference/exhibits/ . (Click on "IPLA Execution-Based, IPLA Reference-Based, or IPLA Execution-Based"). This Amendment supersedes any sub-capacity terms offered for Eligible Programs in their License Information or other agreements.

If there is a conflict between the terms of this Amendment and those of the IPLA, those of this Amendment prevail.

Customer accepts the terms of this Amendment by signing below or by making any payment for Eligible Programs subject to the Amendment.

1. **Incorporated Terms**

1.1 **Eligible Programs Running in an Advanced Workload License Charges ("AWLC") Environment**

The following sections of the Attachment for IBM System z Advanced Workload License Charges, Z125-8535 ("AWLC Attachment"), to the IBM Customer Agreement apply to the Eligible Programs as if they were Advanced Workload License Charge ("AWLC") Programs with Sub-Capacity Pricing, and are incorporated by reference into this Amendment with modifications as indicated:

Section 1 - Definitions

Section 4 – Customer’s Responsibilities under Sub-Capacity Pricing with the following modification:

Subsection f: The phrase "Customer authorizes IBM to make any resulting billing increase or decrease" in the sentence that begins with "Both IBM and Customer agree that Sub-Capacity Reports..." is replaced by "Customer authorizes IBM, or Customer’s reseller, to make any resulting billing increase."

1.2 **Eligible Programs Running in an Advanced Entry Workload License Charges ("AEWLC") Environment**

The following sections of the Attachment for IBM System z Advanced Entry Workload License Charges, Z125-8765 ("AEWLC Attachment"), to the IBM Customer Agreement apply to the Eligible Programs as if they were Advanced Entry Workload License Charge ("AEWLC") Programs with Sub-Capacity Pricing, and are incorporated by reference into this Amendment with modifications as indicated:

Section 1 - Definitions

Section 4 – Customer’s Responsibilities under Sub-Capacity Pricing with the following modification:

Subsection f: The phrase "Customer authorizes IBM to make any resulting billing increase or decrease" in the sentence that begins with "Both IBM and Customer agree that Sub-Capacity Reports..." is replaced by "Customer authorizes IBM, or Customer’s reseller, to make any resulting billing increase."

1.3 **Eligible Programs Running in a Workload License Charges ("WLC") Environment**

The following sections of the Attachment for IBM System z Workload License Charges, Z125-6516 ("WLC Attachment"), to the IBM Customer Agreement 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 1 - Definitions:

Section 4 – Customer’s (or “Your”) Responsibilities under Sub-Capacity Pricing with the following modification:

Subsection 4: The phrase “Customer authorizes (or “you authorize”) IBM to make any resulting billing increase or decrease” in the sentence that begins with “Both IBM and Customer (or “you”) agree that Sub-Capacity Reports...” is replaced by “Customer authorizes (or “you authorize”) IBM, or Customer’s (or “your”) reseller, to make any resulting billing increase.”
1.4 Eligible Programs Running in an Entry Workload License Charges ("EWLC") Environment

The following sections of the Attachment for EWLC, TWLC, zELC, and z/OS.e License Charges, Z125-6587 ("EWLC Attachment"), to the IBM Customer Agreement 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:

Section 1 - Definitions

Subsection 3.6(e) - Sub-Capacity Pricing Terms with the following modification:

Item (iii)(4): The sentence "Customer authorizes (or "You authorize") IBM or Customer's (or "your ") IBM Business Partner to make any resulting billing increase or decrease, and agree to pay such revised charges" is replaced by "Customer authorizes (or "You authorize") IBM or Customer's (or "your") reseller to make any resulting billing increase, and agree to pay such revised charges."

1.5 Eligible Programs Running in a System z New Application License Charges ("zNALC") Environment

The following sections of the Attachment for zNALC License Charges on IBM System z, Z125-7454 ("zNALC Attachment"), to the IBM Customer Agreement apply to the Eligible Programs as if they were zNALC Programs with Sub-Capacity Pricing, and are incorporated by reference into this Amendment with modifications as indicated:

Section 1 - Definitions

Subsection 6(f) – Customer Responsibilities under Sub-Capacity Pricing with the following modification:

The phrase "Customer authorizes IBM to make any resulting billing increase or decrease" is replaced by "Customer authorizes IBM to make any resulting billing increase."

2. Additional Definitions

Environment - Standalone machine or a machine in a parallel sysplex

Execution-Based Terms - Execution-Based licensing terms apply to Eligible Programs whose value is based on the Product LPAR Utilization Capacity of the execution (run-time) Environment. The capacity of an Eligible Program with Execution-Based terms must equal the Product LPAR Utilization Capacity of the LPAR(s) where it executes.

In addition, if a Program is qualified for "IBM Getting Started Sub-Capacity Pricing for z/OS IPLA Software," then the MSUs reported by SCRT may be a fraction of the Product LPAR Utilization Capacity.

Reference-Based Terms -

a. Reference-Based licensing terms apply to Eligible Programs that add value to particular monthly license charge (MLC) Programs or, in selected cases, to particular one time charge (OTC) Programs. The capacity of an Eligible Program with Reference-Based terms must equal the Product LPAR Utilization Capacity of the applicable MLC or OTC Program. This MLC or OTC 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 Parent Program(s) execute.

c. When an Eligible Program with Reference-Based terms is used in a qualified Parallel Sysplex (described in the WLC Attachment or zNALC Attachment), the capacity of the Eligible Program must be equal to the Product LPAR Utilization 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 Product LPAR Utilization Capacity of the Parent Programs, but capped at the Parent Programs’ z/OS Product LPAR Utilization Capacity.

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 an Eligible Program with z/OS-Based Terms must equal the Product LPAR Utilization Capacity of z/OS on that machine.

3. Qualifications

a. Customer must have executed the AWLC Attachment, the AEWLC Attachment, the WLC Attachment, the EWLC Attachment, or the zNALC Attachment, as applicable.
b. Customer 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 Customer’s tracking extends to all machines in Customer’s Enterprise, whether the Eligible Programs have Sub-Capacity or Full Capacity charges. If Customer is unwilling or unable to fulfill Customer’s tracking responsibilities, IBM may terminate this contract upon 30 days written notice. In such event, Full Capacity terms would apply.

c. If Customer has Eligible Programs with Execution-Based or z/OS-Based terms, Customer must have selected Sub-Capacity Pricing for AWLC, AEWLC, VWLC, EWLC, or zNALC, as appropriate, on the machine where the Eligible Program is being used, otherwise Full Capacity MSUs will apply.

d. If Customer has Eligible Programs with Reference-Based terms, Customer must have selected Sub-Capacity Pricing for AWLC, AEWLC, 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.

e. z/OS or z/OS.e must run in z/Architecture (64-bit) mode.

f. OS/390 and MVS may not be licensed to a machine with Sub-Capacity Pricing.

g. For specific machine qualifications, see the Mainframe Exhibits section of the System z Software Contracts Web site (http://ibm.com/systems/z/swprice/reference/exhibits/hardware.html). See machines with "(A)" or "WLC" in the WLC column, "AEWLC" or "EWLC" in the Group column, or "zNl" in the zNALC column.

h. 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 AWLC, AEWLC, WLC, EWLC, and zNALC Attachments.

i. Sub-Capacity terms may not be transferred to third parties.

j. When any of the terms or conditions are not met, then the Eligible Program no longer qualifies for Sub-Capacity pricing. Customer agrees that this will be considered an order placed by Customer without further action on Customer’s part, and Customer authorizes IBM to make any resulting billing increase, including Subscription and Support (“S&S”), if applicable.

4. Resellers

When Customer orders Eligible Programs under this Amendment from a reseller, IBM is not responsible for 1) the actions of the reseller, 2) any additional obligations the reseller may have to Customer, or 3) any products or services that the reseller may supply to Customer under the reseller’s agreements. When Customer obtains Eligible Programs or S&S from Customer’s reseller, Customer’s reseller sets the charges and payment terms. IBM, however, sets the charges and payments terms for increases in charges effected by Customer’s SCRT Report submissions.

5. Charges

a. One-time charges are based on the number of MSUs reported 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://ibm.com/systems/z/swprice/subcap/terms.html.

NOTE: If Customer is required to order additional capacity for an Eligible Program, the S&S capacity for that Eligible Program will also be increased.

b. The number of MSUs associated with an LPAR is equivalent to the highest observed rolling 4-hour average utilization in a Reporting Period. Customer may manage 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.

c. If Customer chooses to specify the defined capacity of the LPAR(s), the SCRT will use the lower of the defined capacity or the 4-hour rolling average utilization in order to determine the Product LPAR Utilization Capacity for each Program.
d. The capping function in the Eligible Operating System is used to ensure the workload does not exceed the LPAR defined capacity Customer has specified. 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.

e. If Sub-Capacity Pricing is not in effect, aggregated charges are based on Full Capacity MSUs or Full Logical Model Capacity, as appropriate.

IBM does not give credits or refunds for charges already due or paid if the applicable Product LPAR Utilization Capacity falls below the then current authorized entitlement.

6. IBM’s Responsibilities

a. IBM will provide the following on the SCRT website (http://ibm.com/systems/z/swprice/subcap/scrt/):
   (1) the SCRT, which is at no charge (NOTE: Written notification of changes will be sent by email.)
   (2) the process for transmitting SCRT Reports and Notification of Changes to IBM

b. 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).

7. Changes to Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Amendment by giving Customer three months’ written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders or S&S renewals.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from Customer (such as an order) are void.

8. Compliance Verification

For purposes of this section, "IPLA Program Terms" means the IPLA and applicable Amendments (including this one) and transaction documents.

Upon reasonable notice, IBM may verify Customer’s compliance with IPLA Program Terms at all site(s) and for all environments in which Customer uses or installs IPLA Programs (whether for testing or productive use or otherwise). Such verification will be conducted during Customer’s normal business hours and in a manner that minimizes disruption to Customer’s business. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

As reasonably necessary to verify Customer’s use and installation of IPLA Programs and Customer’s compliance with the IPLA Program Terms, Customer agrees to 1) create, retain, and provide to IBM and its auditors written and other records, system tools outputs, and other electronic or hard copy system information, including information regarding the system configurations on which the IPLA Programs operate; and 2) permit IBM and its auditors to be present and observe while Customer accesses machines to provide such records, outputs and other system information.

IBM will notify Customer in writing if any such audit indicates that Customer is not in compliance with the IPLA Program Terms. Customer agrees to promptly pay any additional charges (including charges for Subscription and Support and Software Maintenance) and other liabilities Customer becomes obligated to pay based on its use and deployment of IPLA Programs or its failure to comply with the IPLA Program Terms at any time during the period such IPLA Programs are licensed to Customer.

The rights and obligations set forth in this section remain in effect during the period that this Amendment remains in effect and for two years thereafter.
Both of us agree that the complete agreement between us concerning System z IPLA Programs Sub-Capacity Pricing consists of this Amendment including applicable transaction documents, and the IPLA (or any equivalent agreement in effect between us) and replaces any prior oral or written communications between us. Once signed, any reproduction of this Amendment made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original.

Agreed to: (type or print Customer name below)  
Agreed to: (type or print IBM entity name below)

By ____________________________________________________________
Authorized Signature
Name (type or print):
Title:
Date:
Enterprise number:
Enterprise address:

By ____________________________________________________________
Authorized Signature
Name (type or print):
Title:
Date:
Amendment number:
IBM address:

After signing, please return a copy of this Amendment to the “IBM address” shown above.
Attachment for IBM System z Advanced Workload License Charges

The terms of this Attachment for IBM System z Advanced Workload License Charges ("Attachment") are in addition to those of the IBM Customer Agreement (or any equivalent agreement in effect between us). Customer accepts the terms of this Attachment by signing below or making any payment for IBM Programs utilizing the charging structure described below. Any Programs subject to the terms of this Attachment 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 Exhibit (Z125-8539-00 or later) ("Exhibit").

**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 Attachment -- Parallel Sysplex License Charges (Z125-5204-04 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. Customer 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 Workload License Charges Attachment (Z125-8516) for terms.

2. Charges

a. Customer 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 Customer 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 Customer selects AWLC or VVLC for z/OS on that Eligible Machine;
(2) once Customer selects AWLC, Customer 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 VVLC 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 Attachment for zNALC License Charges on IBM System z (Z125-7454-03 or later).
   (b) New Application License Charges ("NALC"), which are described in the Attachment for IBM System z New Application License Charges (Z125-5884-10 or later)
   (c) Select Application License Charges ("SALC"), which are described in the Select Application License Charges Amendment to Attachment for IBM System z Usage Pricing Charges (Z125-7284-01 or later).
   (d) Midrange Workload License Charges ("MWLC"), which are described in the Attachment for IBM System z Midrange Workload License Charges (Z125-7452-00 or later).

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 Customer 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 Customer elects to have Sub-Capacity Pricing for an AWLC IBM Program on an Eligible Machine, then Customer 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 Customer 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 the Amendment for Calculation of z/TPF MSUs (Z125-7283) 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, Customer 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, Customer may select which Parallel Sysplex the Eligible Machine will be included in for billing.

(2) require Customer to provide IBM with a completed IBM Sysplex Verification Package upon the occurrence of any of the following: 1) Customer 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 Customer has received aggregated AWLC pricing, and 4) at least once in every 12 month period.


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](http://ibm.com/systems/z/swprice/sysplex).

(3) are based on the sum of the MSUs on the Sub-Capacity Reports that Customer 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. IBM may offer pricing enhancements to AWLC Sub-Capacity Pricing. Unless IBM advises otherwise, such enhancements, including function and charges applicable to such enhancements, will be subject to additional terms specified in an addendum to this Attachment ("Addendum") to which Customer must agree to be eligible to receive such enhancements. IBM’s provision of Sub-Capacity Pricing enhancements is conditioned upon Customer’s agreement to and compliance with the applicable Addenda and this Attachment.

e. 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 and for which Customer has a current ICA Attachment for IBM System z Workload License Charges (Z125-8516) in place.

(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".

<table>
<thead>
<tr>
<th>Percentage of AWLC Eligible Full Capacity MSUs in an Actively Coupled Parallel Sysplex</th>
<th>Reduction in Monthly VWLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 0 - 20%</td>
<td>0.5%</td>
</tr>
<tr>
<td>21 - 40%</td>
<td>1.5%</td>
</tr>
<tr>
<td>41 - 60%</td>
<td>3.0%</td>
</tr>
<tr>
<td>61 - 80%</td>
<td>4.0%</td>
</tr>
<tr>
<td>81 - &lt; 100%</td>
<td>4.5%</td>
</tr>
</tbody>
</table>

3. IBM’s Responsibilities
IBM will:

a. specify in the Exhibit 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 Customer supplied alternate values indicated in the Sub-Capacity Reports, and if appropriate, at its sole discretion make adjustments to AWLC charges; and

d. register Eligible Machines when Customer submits the initial Sub-Capacity Reports.

4. Customer’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.

Customer 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 Customer submits to IBM, except for those SCRT report fields where Customer comments are expressly required or permitted. Instructions for completion of the required and optional Customer comment fields can be found in the most current version of the SCRT Users Guide (SG24-6522).

c. not enable or use any SCRT control statement except as expressly authorized by IBM in the SCRT User Guide or an Addendum signed by Customer;

d. 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, Customer 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;

e. 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, Customer 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.

f. 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 Customer 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.

Both IBM and Customer 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 Customer without further action on Customer’s part, and Customer authorizes IBM to make any resulting billing increase or decrease. 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;

g. 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 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 SCRT Users Guide (SG24-6522). Failure to submit TSAD may result in IBM Programs being charged on a Full Capacity MSU basis;

h. assign a person in Customer’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;

i. contact IBM if Customer elects to convert from AWLC Sub-Capacity Pricing to AWLC at Full Capacity MSUs;

j. not register, directly or indirectly, IBM Programs with the z/OS IFAUSAGE service, except as directed by the documentation for the IBM Program;

k. not register, directly or indirectly, Non-IBM Programs with the z/OS IFAUSAGE service as an IBM Program with an IBM product identifier; and

l. 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

For purposes of this section, "ICA Program Terms" means terms applicable to ICA Programs in the IBM Customer Agreement and applicable Transaction Documents and Attachments (including this one).

Upon reasonable notice, IBM may verify Customer’s compliance with ICA Program Terms at all site(s) and for all environments in which Customer uses or installs ICA Programs (whether for testing or productive use or otherwise). Such verification will be conducted during Customer’s normal business hours and in a manner that minimizes disruption to Customer’s business. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

As reasonably necessary to verify Customer’s use and installation of ICA Programs and Customer’s compliance with the ICA Program Terms, Customer agrees to: 1) create, retain, and provide to IBM and its auditors written and other records, system tools outputs, and other electronic or hard copy system information, including information regarding the system configurations on which the ICA Programs operate; and 2) permit IBM and its auditors to be present and observe while Customer accesses machines to provide such records, outputs and other system information.
IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with the ICA Program Terms. Customer agrees to promptly pay any additional charges and other liabilities Customer becomes obligated to pay based on its use and deployment of ICA Programs or its failure to comply with the ICA Program Terms at any time during the period such ICA Programs are licensed to Customer.

The rights and obligations in this section remain in effect during the period such ICA Programs are licensed to Customer and for two years thereafter. This section applies to all ICA Programs licensed within Customer's Enterprise, including any licensed under separate Attachments and Transaction Documents, notwithstanding any contrary audit provisions that may be contained in them.

Both of us agree that the complete agreement between us concerning IBM System z Advanced Workload License Charges consists of this Attachment, applicable Transaction Documents and the IBM Customer Agreement (or any equivalent agreement in effect between us) and replaces any prior oral or written communications between us. In entering into this Attachment, 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. Once signed, any reproduction of this Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to: (Type or print Customer name below)  

By _______________________________  
Authorized signature

Name (type or print):  
Date:  
Customer Identification number:  
Customer address:

Agreed to:  

International Business Machines Corporation  

By _______________________________  
Authorized signature

Name (type or print):  
Date:  
Agreement number:  
IBM address:
IBM System z Advanced Workload License Charges Exhibit

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. To determine the process for transmitting Sub-Capacity Reports to IBM, see the following website: http://ibm.com/systems/z/swprice/subcap/scert.
Addendum for Integrated Workload Pricing to Attachment for IBM System z Advanced Workload License Charges

The terms of this Addendum for Integrated Workload Pricing to Attachment for IBM System z Advanced Workload License Charges ("Addendum") are in addition to the terms of the Attachment for IBM System z Advanced Workload License Charges ("Attachment") and the IBM Customer Agreement (or any equivalent agreement in effect between us) ("Agreement"). The terms of this Addendum in addition to those of the Attachment govern Customer's entitlement to the Integrated Workload Pricing ("IWP") Adjustment. Capitalized terms used but not defined in this Addendum have the same meaning given to them in the Attachment and the Agreement. Either party may terminate this Addendum upon three months' written notice. Customer accepts the terms of this Addendum by signing below.

1. Definitions

   Standard Sub-Capacity Value — the number of MSUs equivalent to the Product LPAR Utilization Capacity reported by SCRT for the Program when IWP does not apply to that Program for the specified Eligible Machine during a Reporting Period.

   IWP Adjusted Program — a Program (1) eligible for a reduction to the Standard Sub-Capacity Value and (2) specified at http://ibm.com/systems/z/swprice/reference/exhibits/iwp.html

   IWP Defining Program — a Program (1) whose processing time SCRT uses to reduce the Standard Sub-Capacity Value of an IWP Adjusted Program and (2) that IBM specifies at http://ibm.com/systems/z/swprice/reference/exhibits/iwp.html

   Hourly LPAR Utilization Value — the number of MSUs a logical partition ("LPAR") uses in an hour, based on a four-hour rolling average utilization.

   Hourly Program Utilization Value — the number of MSUs a Program in an LPAR uses in an hour, based on a four-hour rolling average utilization.

   Hourly Adjusted LPAR Value — the number of MSUs by which the Hourly Program Utilization Value for an IWP Defining Program has reduced the Hourly LPAR Utilization Value for an IWP Adjusted Program.

   Hourly Adjusted Sub-Capacity Value — the sum of all the concurrent Hourly Adjusted LPAR Values for all copies of a Program running on the same Eligible Machine.

   IWP Adjustment Charge — the charge for an IWP Adjusted Program determined by the number of MSUs reported by SCRT for that Program for the specified Eligible Machine during a Reporting Period. This value is equal to the highest Hourly Adjusted Sub-Capacity Value for each IWP Adjusted program for that Reporting Period.

2. Customer Responsibilities

   Customer shall

   a. be at SCRT version 19.2.0 or higher;
   b. apply z/OS APAR OA31615;
   c. promptly install any future required z/OS service or required product specific service for IWP and implement any IBM directed technical measures to maintain Integrated Workload Pricing;
   d. use the SCRT control statement documented in the SCRT User Guide in order to enable support for Integrated Workload Pricing;
   e. ensure that all z/OS guest systems running under z/VM are at z/OS V1.10, or higher. z/VM must be at either
      (1) z/VM V5.4 with APAR VM64798 (or higher) or
      (2) z/VM V6.1 with APAR VM64879 (or higher);
   f. not cause directly or indirectly any software to have the attributes of an IWP Defining Program unless IBM has designated that software as a IWP Defining Program;
g. not cause directly or indirectly any IBM Program to be treated as an IWP Adjusted Program unless it has been designated by IBM as an IWP Adjusted Program;

h. not submit Sub-Capacity Reports that provide the IWP Adjustment attributable to software that has been withdrawn as an IWP Defining Program upon notice by IBM; and

i. promptly pay directly to IBM any additional charges and other liabilities Customer becomes obligated to pay arising out of Customer's submission of altered reporting of the IWP Adjustment or failure to otherwise comply with Integrated Workload Pricing Terms. Customer's liability for any such charges attaches at the moment that the Customer submitted the altered report or otherwise failed to comply.

3. IBM Responsibilities
IBM shall
a. subject to customer's compliance with this Addendum, apply the IWP Adjustment Charge to IWP Adjusted Programs as calculated by SCRT and in accordance with this Addendum and the Attachment; and
b. maintain a listing of IWP Adjusted Programs and IWP Defining Programs on an IBM Web site.

4. IBM Rights
IBM may
a. remove and or modify IWP Adjusted Programs and IWP Defining Programs at its discretion and such changes become effective immediately and apply to the next billing period; and
b. reject Sub-Capacity Reports that reflect data generated by or concerning ineligible or withdrawn IWP Adjusted Programs or IWP Defining Programs.

Both of us agree that the complete agreement between us concerning Integrated Workload Pricing consists of this Addendum, the Attachment, and the Agreement without modification and replaces any prior oral or written communications between us. In entering into this Addendum, neither of us is relying on any representation that is not specified in this Addendum, including without limitation any representations concerning: 1) the experiences or recommendations of other parties; or 2) results or savings Customer may achieve. Once signed, any reproduction of this Addendum made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original.

Agreed to:  
{Customer Legal Name}  

Agreed to:  
International Business Machines Corporation

By ________________________________  
Authorized signature

Name (type or print):  
Title:  
Date:  
Customer Identification number:  
Customer address:

After signing, please return a copy of this page to the "IBM Address" shown above
IBM Customer Agreement
Attachment for IBM System z Workload License Charges

The terms of this Attachment for IBM System z Workload License Charges ("Attachment") are in addition to those of the IBM Customer Agreement (or any equivalent agreement in effect between us). Customer accepts the terms of this Attachment by signing below or making any payment for IBM Programs utilizing the charging structure described below. Any Programs licensed in accordance with the terms of this Attachment 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
- **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 on the IBM System z Workload License Charges Exhibit, Z125-6324-11 or later, ("Exhibit").
- **Eligible Operating System**: An Operating System specified in the Exhibit.
- **Full Capacity MSUs**: The total capacity of an Eligible 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. 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**: Parallel Sysplex License Charges available for selected IBM Programs which are used on an Eligible Machine and are running under an Eligible Operating System. See Exhibit - Parallel Sysplex License Charges (Z125-6206-57 or later).
- **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 SCRT90 data and calculates the Product LPAR Utilization Capacity for most VWLC IBM Programs. The Sub-Capacity Report includes these calculations. Customer 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 charges allow for Sub-Capacity Pricing.

Both of us agree that the complete agreement between us concerning this transaction consists of this Attachment, applicable Transaction Documents and the IBM Customer Agreement (or any equivalent agreement in effect between us) and replaces any prior oral or written communications between us. Once signed, any reproduction of this Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

International Business Machines Corporation

By:  
Authorized Signature  
Name (type or print):  
Date:  
Enterprise number:  
Enterprise address:

By:  
Authorized Signature  
Name (type or print):  
Date:  
Agreement number:  
IBM address:

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After signing, please return a copy of this page to the "IBM address" shown above.
2. Charges

1. Customer has a choice of selecting either, if available, but not both, WLC or PSLC for all IBM Programs within an Operating System Family on an Eligible Machine that has an Eligible Operating System licensed to it. However:
   (a) once Customer selects WLC, Customer may not switch back to PSLC without prior IBM approval, which IBM may grant in its sole discretion;
   (b) WLC Programs and PSLC Programs may not be aggregated together for pricing purposes; and
   (c) 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") which is described in the Attachment for IBM System z New Application License Charges (Z125-5884-10 or later).
      (ii) System z New Application License Charges ("zNALC") which is described in the Attachment for zNALC License Charges on IBM System z (Z125-7454-00 or later).
      (iii) Select Application License Charges ("SALC") which is described in the Select Application License Charges Amendment to Attachment for IBM System z Usage Pricing Charges (Z125-7284-01 or later).
      (iv) Midrange Workload License Charges ("MWLC") which is described in the Attachment for IBM System z Midrange Workload License Charges (Z125-7452-00 or later).

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 the Eligible Operating System on the 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) if Sub-Capacity Pricing has commenced for an Eligible Operating System on an 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 Customer elects to have Sub-Capacity Pricing for a VWLC IBM Program on an Eligible Machine, then Customer must have Sub-Capacity Pricing 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 (Z125-7283) 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:

<table>
<thead>
<tr>
<th>If z/OS is running in Native LPAR(s) ...</th>
<th>and z/OS is running in Guest LPAR(s), at least one of which is at V1.6 or lower ...</th>
<th>and z/OS is running in Guest LPAR(s), at least one of which is at V1.7 or higher ...</th>
<th>then, MSUs are calculated in LPAR(s) in which the VWLC IBM Program ran, as follows:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>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</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>The highest combined 4-hour rolling average utilization across all z/OS Native LPARs and z/OS Guest systems</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>The highest combined maximum capacity of all z/OS Guest LPARs</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>The highest combined maximum capacity of all z/OS Guest LPARs</td>
</tr>
</tbody>
</table>
Customer 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 Customer 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;

(i) 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;

(ii) The capping function in z/OS 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

(k) Increases in any IBM System z Program VWLC Charges, due to changes Customer 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 charges 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 Customer 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 Exhibit.

(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").

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 in 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 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, 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 for any year during which Customer receives aggregated WLC pricing.

NOTE: Information can be found at http://ibm.com/zseries/swprice/sysplex/

(e) 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/

3. IBM’s Responsibilities

IBM will:

1. specify in the Exhibit 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 Customer indicates on the Sub-Capacity Reports Customer submits; and

4. register Eligible Machines when Customer submits the initial Sub-Capacity Reports.

4. Customer’s Responsibilities under Sub-Capacity Pricing

Customer 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 SCRT89 data to produce a Sub-Capacity Report. In addition, Customer 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, Customer may 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 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.
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 Customer agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity will be considered 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. 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;
5. 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 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 IBM Programs being charged on a Full Capacity MSU basis;
6. 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
7. notify IBM if Customer elects to convert from Sub-Capacity Pricing to WLC at Full Capacity MSUs.
5. Compliance Verification
For purposes of this section, "ICA Program Terms" means terms applicable to ICA Programs in the IBM Customer Agreement and applicable Transaction Documents and Attachments (including this one).
Upon reasonable notice, IBM may verify Customer's compliance with ICA Program Terms at all site(s) and for all environments in which Customer uses or installs ICA Programs (whether for testing or productive use or otherwise). Such verification will be conducted during Customer's normal business hours and in a manner that minimizes disruption to Customer's business. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.
As reasonably necessary to verify Customer's use and installation of ICA Programs and Customer's compliance with the ICA Program Terms, Customer agrees to: 1) create, retain, and provide to IBM and its auditors written and other records, system tools outputs, and other electronic or hard copy system information, including information regarding the system configurations on which the ICA Programs operate; and 2) permit IBM and its auditors to be present and observe while Customer accesses machines to provide such records, outputs and other system information. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with the ICA Program Terms. Customer agrees to promptly pay any additional charges and other liabilities Customer becomes obligated to pay based on its use and deployment of ICA Programs or its failure to comply with the ICA Program Terms at any time during the period such ICA Programs are licensed to Customer.
The rights and obligations in this section remain in effect during the period such ICA Programs are licensed to Customer and for two years thereafter. This section applies to all ICA Programs licensed within Customer's Enterprise, including any licensed under separate Attachments and Transaction Documents, notwithstanding any contrary audit provisions that may be contained in them.
IBM Customer Agreement
Attachment for EWLC, TWLC, zELC and z/OS.e License Charges

These terms are in addition to those of the IBM Customer Agreement or any equivalent agreement in effect between us (the "Agreement"). Customer accepts the terms of this Attachment by signing below or making any payment for IBM Programs utilizing the charging structures described below.

This Attachment provides additional terms 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.

NOTE: If z/OS.e is not running and the only charges for operating systems on an Eligible Machine are zELC, TWLC, or Full-Capacity EWLC charges, then this Attachment need not be signed. IBM System z Machines Exhibit (Z125-3901-54 or later - Part 4) applies.

1. 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 zArchitecture (64-bit) mode. Eligible Machines are specified in the Exhibit for EWLC, TWLC, zELC and z/OS.e License Charges, Z125-6588-09 or later ("Exhibit").

   Eligible Operating Systems
   An Operating System specified in the Exhibit.

   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 capacity of an Eligible Machine.

   Native (LPAR)
   An Eligible Operating System when not 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. Customer is required to submit the report to IBM only if Sub-Capacity pricing is in effect.

   System z9 and zSeries
   Software Contracts Website


Both of us agree that the complete agreement between us concerning this transaction consists of this Attachment, applicable Transaction Documents and the IBM Customer Agreement (or any equivalent agreement in effect between us) and replaces any prior oral or written communications between us. Once signed, any reproduction of this Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

By
Authorized Signature

Name (type or print):

Date:

Enterprise number:

Enterprise address:

By
Authorized Signature

Name (type or print):

Date:

Agreement number:

IBM address:

After signing, please return a copy of this page to the "IBM address" shown above

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2. LPAR Limitations
Customer may not use more than 15 LPARs on a zSeries 890 Capacity Setting 110

3. Charges for Programs running on an Eligible Machine
1. 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 Exhibit.
   (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:
      i. Customer advises IBM of planned MSUs:
         Within 30 days of the billing period start date for EWLC charges, will advise IBM of the planned MSU usage for both the z/OS.e and the non-z/OS.e Logical Models. 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 zSeries Software Contracts Website.
      ii. 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 Customer's planned z/OS.e MSU usage, or the next higher Logical Model if Customer's 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 EWLC programs based upon Customer's planned z/OS.e MSU usage. IBM will similarly calculate the non-z/OS.e tier using the non-z/OS.e MSUs.
      iii. Changing Logical Models sizes:
         If an Eligible Machine is upgraded or downgraded, or if Customer changes the MSUs used for z/OS.e, Customer will advise IBM of the new planned MSUs for both z/OS.e and non-z/OS.e. IBM will adjust the Logical Model sizes accordingly.
      iv. 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.
         IBM will adjust MSU usage to the reduced MSUs, and adjust any resulting billing increase and agree to pay such revised charges.
      v. Actual MSU usage 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 Customer provided to IBM, IBM may adjust the size of the Logical Models accordingly. Both Customer and IBM agree that this will be considered to be an order placed by Customer without further action on Customer's part. Customer authorizes IBM or Customer's IBM Business Partner to make any resulting billing increase and agree to pay such revised charges.
   (c) If the charges on an Eligible Machine are either aggregated Variable Workload License Charge ("VWLC") or aggregated Parallel Sysplex License Charges ("PSSLc"), 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:
      (i) 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.
      (ii) 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.
2. z/OS.e Charges:
   z/OS.e charges are based on the number of engines in the Logical Model in which z/OS.e runs or on EWLC charges.
3. 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 Attachments, Supplements and Exhibits for Aggregated Charges (as applicable)  
   (i) For PSLC:  
       (1) Attachment for Parallel Sysplex License Charges (Z125-5205); and  
       (2) Exhibit - Parallel Sysplex License Charges (Z125-5206).  
   (ii) For WLC:  
       (1) Attachment for IBM System z Workload License Charges (Z125-8516); and  
       (2) IBM System z Workload License Charges Exhibit (Z125-6324).

4. 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 Customer 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 Eligible Machine to which the Programs are licensed, will be in effect for a minimum period of one month.

5. TWLC Charges  
   (a) TWLC charges are a tiered price structure and based on Full Logical Model Capacity. Sub-Capacity pricing is not available.  
   (b) TWLC charges are available for selected Programs used on non-aggregated Eligible Machines identified in the "Group" column by "TWLC" followed by the TWLC tier on the System z9 and zSeries Software Contracts Website.  
   (c) 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 called "Other."  
   (d) If Customer 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 Customer selects Midrange Workload License Charges ("MWLC") on z/VSE V4 then all Programs with MWLC available must have MWLC charges.  
   (e) 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 period of one month.

6. 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 Customer selects 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 that Eligible Machine must have zELC charges, if zELC charges are available, or TWLC charges, if TWLC charges are available. However, if Customer selects 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 Amendment to Attachment for IBM System z Usage Pricing Charges (Z125-7284-00 or later).

(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 period of one month.

(e) Sub-Capacity Pricing Terms:  
   (i) Sub-Capacity Charges:  
       (1) Monthly charges are based on the number of MSUs reported in the Program's Sub-Capacity Report for the specified Eligible Machine during a 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 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/.
(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, enabling Sub-Capacity Pricing for that Operating System Family.

(3) The initial monthly charge for a non-operating system license is based upon the applicable operating system MSUs.

(4) 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 charge, the Program will be charged at the minimum EWLC MSUs.

NOTE: IBM specifies minimum EWLC MSUs in its programming announcements.

(5) If Customer elects to have Sub-Capacity Pricing for an EWLC IBM Program on an Eligible Machine, then Customer must have Sub-Capacity Pricing for all EWLC IBM Programs in that Operating System Family on that Eligible Machine.

(6) EWLC features have the same MSUs as the Program.

(7) 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 (Z125-7283) for further details.

(8) When z/OS or z/OS.e is licensed to an Eligible Machine, 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 one of which is at V1.6 or lower ... and z/OS or z/OS.e 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 EWLC IBM Program ran, as follows: |
|---|---|---|---|---|
| Yes | Yes | Yes | The highest combined 1.4-hour rolling average utilization across all z/OS and z/OS.e Native LPARs, and 2. The maximum capacity of all z/OS and z/OS.e Guest LPARs |
| Yes | Yes | 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 | Yes | Yes | The highest combined maximum capacity of all z/OS and z/OS.e Guest LPARs |

Customer 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 Customer 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.

(9) 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.

(10) The capping function in z/OS or z/OS.e 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.

(ii) IBM's Responsibilities:

IBM will:

(1) specify in the Exhibit a) the Eligible Machines, and b) the date and the process for transmitting Sub-Capacity Reports to IBM;

(2) provide the Sub-Capacity Reporting Tool;

(3) adjust EWLC 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.

(iii) Customer's Responsibilities under Sub-Capacity Pricing:

Customer agrees to:
(1) promptly install any enabling code for 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 SCRT89 data to produce a Sub-Capacity Report. In addition, Customer 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, Customer may also provide alternate values, as defined in the SCRT Users Guide (SG24-6522), for each Program, with an explanation for the variance;

(4) send to IBM within the time specified in the Exhibit:
   (i) 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
   (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 Customer agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity will be considered to be orders placed by Customer without further action on Customer’s part. Customer authorizes IBM or Customer’s IBM Business Partner to make any resulting billing increase or decrease, and agrees to pay such revised charges. Sub-Capacity Reports not submitted by the “not later than” date specified in the Exhibit will result in Programs being charged on a Full Capacity basis for the Reporting Period;

(5) 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 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 Programs being charged on a Full Capacity basis;

(6) 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

(7) notify IBM if Customer elects to convert from Sub-Capacity pricing to EWLC at Full Capacity.

7. **GOTC Charges (Graduated One-Time Charges)**
   (a) Programs for which Customer 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 Exhibit or the System z9 and zSeries Software Contracts Website is higher than the current GOTC entitlement. Refunds do not apply if the Eligible Machine 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. Customer may run z/OS.e only on Eligible Machines.
   2. Customer must run z/OS.e in a Logical Partition ("LPAR") that has "ZOSE" as the first four characters of the LPAR name.
   3. Customer must execute z/OS.e in z/Architecture (64-bit) mode.
   4. Customer must order and license z/OS.e for the number of engines in the Logical Model in which Customer will run z/OS.e, or alternatively, z/OS.e may be ordered with EWLC charges.
   5. Customer may use only the levels of Language Environment (LE), JES2 and JES3 that are delivered with z/OS.e.
   6. Customer 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
7. Customer may not run any of the following under z/OS.e:
   (a) CICS, IMS, FORTRAN, or COBOL applications. However, Customer may run precompiled COBOL DB2 stored
       procedures and other precompiled COBOL applications using the Language Environment preinitialization
       interface (CEEPPI). Customer 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 as they access LPARs
       or IFLs on the same Eligible Machine.
   (b) COBOL, FORTRAN, PL/I, or VisualAge PL/I compilers. However, Customer may execute precompiled PL/I and
       VisualAge PL/I applications.
   (c) DB2 QMF Host feature, DB2 QMF HPO feature.
   (d) Customer may not have more than eight concurrent TSO users under z/OS.e.
   (e) Customer 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) Customer agrees to configure Customer's Eligible Machine to send Transmit System Availability Data ("TSAD")
       to IBM weekly via the Remote Support Facility ("RSF"). This enables IBM to verify that Customer's z/OS.e
       license matches Customer's actual Eligible Machine configuration. An alternate means for Customer to collect
       and transmit this data is provided in the "Hardware Management Console Operations Guide" publication.

5. Programs that run on an IFL
   1. Programs that run on an IFL engine may be licensed under the terms of the agreement provided with them.
   2. 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 the Eligible Machine.
   3. 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.

6. Compliance Verification
   For purposes of this section, "ICA Program Terms" means terms applicable to ICA Programs in the IBM Customer
   Agreement and applicable Transaction Documents and Attachments (including this one).
   Upon reasonable notice, IBM may verify Customer's compliance with ICA Program Terms at all site(s) and for all
   environments in which Customer uses or installs ICA Programs (whether for testing or productive use or otherwise). Such
   verification will be conducted during Customer's normal business hours and in a manner that minimizes disruption to
   Customer's business. IBM may use an independent auditor to assist with such verification, provided IBM has a written
   confidentiality agreement in place with such auditor.
   As reasonably necessary to verify Customer's use and installation of ICA Programs and Customer's compliance with the
   ICA Program Terms, Customer agrees to: 1) create, retain, and provide to IBM and its auditors written and other records,
   system tools outputs, and other electronic or hard copy system information, including information regarding the system
   configurations on which the ICA Programs operate; and 2) permit IBM and its auditors to be present and observe while
   Customer accesses machines to provide such records, outputs and other system information.
   IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with the ICA
   Program Terms. Customer agrees to promptly pay any additional charges and other liabilities Customer becomes
   obligated to pay based on its use and deployment of ICA Programs or its failure to comply with the ICA Program Terms at
   any time during the period such ICA Programs are licensed to Customer.
   The rights and obligations in this section remain in effect during the period such ICA Programs are licensed to Customer
   and for two years thereafter. This section applies to all ICA Programs licensed within Customer's Enterprise, including
   any licensed under separate Attachments and Transaction Documents, notwithstanding any contrary audit provisions that
   may be contained in them.
IBM Customer Agreement

Exhibit for EWLC, TWLC, zELC and z/OS.e License Charges

Revision Date: November 6, 2008

1. Logical Model Combinations for zELC

<table>
<thead>
<tr>
<th>z/800 Physical Machine Model</th>
<th>Number of Physical Engines</th>
<th>z/OS.e Logical Model</th>
<th>Non-z/OS.e Logical Model</th>
<th>Number of Non-z/OS.e Engines</th>
</tr>
</thead>
<tbody>
<tr>
<td>One z/OS.e engine</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0X2</td>
<td>2</td>
<td>OC1</td>
<td>0A1</td>
<td>1</td>
</tr>
<tr>
<td>0A2</td>
<td>2</td>
<td>OC1</td>
<td>0B1</td>
<td>1</td>
</tr>
<tr>
<td>002</td>
<td>2</td>
<td>OC1</td>
<td>001</td>
<td>1</td>
</tr>
<tr>
<td>003</td>
<td>3</td>
<td>OC1</td>
<td>002</td>
<td>2</td>
</tr>
<tr>
<td>004</td>
<td>4</td>
<td>OC1</td>
<td>003</td>
<td>3</td>
</tr>
<tr>
<td>Two z/OS.e engines</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>003</td>
<td>3</td>
<td>OA2</td>
<td>001</td>
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<tr>
<td>004</td>
<td>4</td>
<td>OA2</td>
<td>002</td>
<td>2</td>
</tr>
<tr>
<td>Three z/OS.e engines</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>004</td>
<td>4</td>
<td>003</td>
<td>0B1</td>
<td>1</td>
</tr>
</tbody>
</table>

a. 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.
b. zELC charges for a Program running on only one Logical Model are based on the category of that Logical Model.
c. 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

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 Contracts Web site for each applicable machine in the column called "Other."

3. Eligible Machines:

Individual Eligible Machines including their Full-Capacity MSUs are specified in the System z9 and zSeries Software Contracts Web site (http://www.ibm.com/zseries/library/swpriceinfo/) by "EWLC", "TWLC", or "zELC" which are located in the Group column.

4. Eligible Operating Systems:

z/OS 5694-A01
z/OS.e 5655-G52
z/TPF 5748-T15

5. Date Sub-Capacity Reports due:

Customer is to transmit the Sub-Capacity reports not earlier than the second, but not later than the ninth, calendar day of the month.

6. To determine the process for transmitting Sub-Capacity Reports to IBM

Go to the following Web site: http://www-1.ibm.com/servers/eserver/zseries/swprice/scrt/
International Passport Advantage Agreement

This IBM International Passport Advantage Agreement ("Agreement") governs transactions by which Customer acquires Eligible Products. Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. This Agreement is entered into with the understanding that both Customer Originating Company and IBM Originating Company are bound by its terms. Both Customer Originating Company and IBM Originating Company agree to distribute copies of this Agreement to their respective participating Enterprise companies. The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

This Agreement, including any applicable Attachments, Terms of Use, and any Transaction Documents is the complete agreement regarding transactions by which Customer acquires Eligible Products, and replace any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

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 Agreement Structure
This Agreement is organized in six Parts:
- Part 2 - Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.
- Part 3 - Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.
- Part 4 - Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.
- Part 5 - IBM SaaS Includes terms regarding Ownership, Customer’s Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.
- Part 6 - Country-unique Terms.

1.2 Attachments and Transaction Documents
Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments contain terms that may apply to more than one transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to an individual transaction. 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 that subsequently enrolls under this Agreement.
- 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 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.

CEO User - an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

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 Customer and any user authorized by Customer.

Customer - the customer Enterprise company that is ordering Eligible Products.

Customer Originating Company - the legal entity within Customer's Enterprise of which the entity that identifies itself as the "Originating Site" on an "IBM International Passport Advantage Enrollment Form" is a part.

Customer-set-up Machine Component - an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation -

a. for a Customer-set-up Machine Component, the date on Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer's IBM reseller informs 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 Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date - the date IBM accepts Customer's initial order for Eligible Products, either directly from Customer or from Customer's reseller.

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 Products - commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase 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 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.

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 - any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company.

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 Business Partner - an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain 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 Customer Originating Company'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 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 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 Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support - software subscription and support provided for IBM Programs licensed under the IPLA. See 3.5.1 IBM Software Subscription and Support for further description.

IPLA - IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at http://www.ibm.com/software/sla and from IBM and its resellers.

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 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 Company - the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

Originating Site - Originating Company Site.

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 Customer's behalf.

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.ibm.com/software/lotus/passportadvantage/pvulicensingforcustomers.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 Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

RSVP - Relationship Suggested Volume Price.

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 customers, either directly or through a reseller.

Site - any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of 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 Customer as specified in the applicable Transaction Document.

SVP - Suggested Volume Price.

Term - the period that begins either on the date IBM accepts 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 Customer and viewed at http://www.ibm.com/software/sla/sladb.nsf/sla/tou/.

Third Party Software Subscription and Support - software subscription and support provided under the third party's terms for Non-IBM Programs. See 3.5.1 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
The Customer Originating Company and thereafter each of its participating Enterprise companies accepts this Agreement without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to acquire Eligible Products, as applicable. This Agreement is effective on the Effective Date and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with Section 1.15 Agreement Termination.

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery
Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to 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 Customer and IBM.

1.6 Payment
See Illinois Master Software and Services Agreement Section 3.8

The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term,
1.7 **Taxes**
If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM’s net income.

1.8 **RSVP Level**
The initial “RSVP Level” is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher “SVP Level.” In such case, the higher SVP Level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

**SVP/RSVP Level Table:**

<table>
<thead>
<tr>
<th>SVP/RSVP Level</th>
<th>BL</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
</tr>
</thead>
<tbody>
<tr>
<td>Points</td>
<td>&lt;500</td>
<td>500</td>
<td>1,000</td>
<td>2,500</td>
<td>5,000</td>
<td>10,000</td>
</tr>
</tbody>
</table>

1.9 **Changes to Agreement Terms**
IBM may change the terms of this Agreement by giving the Customer Originating Company three months’ written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. Customer agrees that Customer has consented to any such change if Customer does not notify IBM in writing prior to the effective date specified in IBM's written notice that Customer disagrees with the change.

Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from Customer are void.

However, any change to the terms of this Agreement which require that the State indemnify Vendor shall be null and void.

1.10 **Eligible Products**
Each orderable part number for an Eligible Product is assigned a point value, which may be zero. This point value is used to determine Customer’s RSVP or a transaction’s SVP, as applicable. See Section 1.8 RSVP Level above.

IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. If IBM withdraws an Eligible Product from marketing, 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, 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.

1.11 **IBM Business Partners and Resellers**
In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer’s IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.12 **Intellectual Property Protection**
For purposes of this Section 1.12, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.
1.12.1 Third Party Claims
See Illinois Master Software and Services Agreement Section 4.8.4

1.13 Limitation of Liability
See Illinois Master Software and Services Agreement Section 4.8.6

1.13.1 Items for Which IBM May Be Liable
Illinois Master Software and Services Agreement Section 4.8.1

1.13.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS ELIGIBLE PRODUCT DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

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

1.14 General Principles of Our Relationship

1.14.1 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.

1.14.2 Assignment and Resale
See Illinois Master Software and Services Agreement Section 2.5.1

1.14.3 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 Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or 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.

1.14.4 Dispute Resolution
Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than 10 years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.14.5 Other Principles of Our Relationship
a. See Illinois Master Software and Services Agreement Section 4.21
b. See Illinois Master Software and Services Agreement Section 4.21

c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use
Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.

e. See Illinois Master Software and Services Agreement Section 4.21

f. 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 Customer's decision to implement any recommendation concerning Customer's business practices and operations.

g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at http://www.ibm.com/services/us/imc/html/aup.htm and applicable data protection laws.

k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to 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 Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

l. 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 Customer may achieve.

1.15 Agreement Termination

See Illinois Master Software and Services Agreement Section 1.4

1.16 Compliance Verification

For purposes of this Section 1.16 (Compliance Verification), "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (http://www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 1.16 remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.16.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.16.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. 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.

1.17 Geographic Scope and Governing Law

1.17.1 Geographic Scope
The terms of this Agreement apply in countries in which 1) IBM markets its Eligible Products directly or 2) its
Eligible Products have been announced as otherwise available.

1.17.2 Governing Law
Illinois Master Software and Services Agreement Section 4.14

2. Warranties
See Illinois Master Software and Services Agreement Section 2.9

3. Programs and Subscription and Support
To acquire additional authorizations to use Programs under this Agreement, 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.

3.1.1 Versions and Platforms:
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. Customer is authorized to use the Program(s) that 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
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. Customer agrees to terminate Customer’s use of the replaced IBM Programs when 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. Customer agrees to terminate Customer’s use of the replaced Non-IBM Programs when
Customer installs the replacement Programs.

3.1.4 Money-back Guarantee
The IPLA's "money-back guarantee" only applies the first time Customer licenses the IBM Program. If an
IBM Program license is for a Fixed Term that is subject to renewal, Customer may obtain a refund only if
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 the terms of this Agreement, including its Attachments and Transaction
Documents and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its
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.

3.2.2 IBM’s Responsibilities
IBM will make available and authorize Customer to use:
a. the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.
Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms
Customer agrees to:

a. install and configure the most current version of ILMT in accordance with the ILMT Information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable 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 Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
   (3) if the total physical capacity of 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 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, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for 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. 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 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 than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. 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 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 or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Customer exceeded 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 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 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.

3.3.2 Withdrawal of Fixed Term License for a particular Program
If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that
a. Customer may not renew the Fixed Term License for that IBM Program; and
b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, 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.

2.4 CEO Product Categories
"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer’s first CEO Product Category ("Primary Product Category") for all CEO Users within Customer’s Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at http://www.ibm.com/software/passportadvantage.

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at http://www.ibm.com/software/passportadvantage. However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer’s Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

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

Increasing the number of CEO Users
In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

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

3.5 Software Subscription and Support and Selected Support
3.5.1 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 Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
(2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.

(3) IBM provides Customer assistance for 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, 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 Customer's Information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to 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 Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) 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 CUSTOMER'S SITE, 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 CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTALLATION SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at http://www.ibm.com/lotus/PASupportedPrograms.

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 Customer Selected Program defect corrections, if any, that it develops.

b. IBM provides Customer assistance for 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, 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 Customer with assistance in designing and developing applications based on Customer's subscription level.

d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours.
IBM does not provide licenses under this Agreement for Selected Programs.

3.5.3 Customer Data and Databases
To assist 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 Customer 1) allow IBM to remotely access Customer’s system or 2) send 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 Customer is located), and Customer authorizes IBM to do so. Customer remains responsible for 1) any data and the content of any database 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. 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.

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support
Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER’S RESELLER, AS APPLICABLE, CUSTOMER’S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

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, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5 Withdrawal of Software Subscription and 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, Customer understands that

a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and

b. if 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 Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If 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 Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4. Appliances
4.1 Virtual Appliance
Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.
4.2 Appliances Comprising Both Program and Machine Components
IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components
Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. 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 manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss
When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

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 Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, 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) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
   (2) Customer is responsible for installing a 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 Customer defers installation or a 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, 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 Customer must return the Upgrade at 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) 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 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. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that 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. 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. 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 Customer has acquired IBM's written authorization. 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, 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 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. 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. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS
Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

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 Customer and IBM.

5.1 Ownership
IBM and its suppliers own IBM SaaS. 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 Customer's Right to Use
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. Customer accepts the Terms of Use of the IBM SaaS offering;
b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and

c. 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 Customer's own intranets in connection with 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.

5.3.2 IBM SaaS Subscription Period
An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal
Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support
During an IBM SaaS Subscription Period:

a. IBM provides assistance, as specified in the ToU, for 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.

5.5 Content
IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

a. ensuring the adequacy of any IBM SaaS elements to satisfy any 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 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. 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.
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.

5.6 Termination of IBM SaaS
See Illinois Master Software and Services Agreement Section 1.4
IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.
Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.
Attachment for Sub-Capacity Licensing Terms

The terms of this Attachment for Sub-Capacity Terms ("Attachment") are in addition to those of the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable, ("Agreement") and govern the transaction when you obtain “Eligible Sub-Capacity Products” from IBM or a reseller for use on an “Eligible Virtualization Environment.” For IBM Passport Advantage transactions, the Customer Originating Company accepts the terms of this Attachment without modification by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to obtain Eligible Sub-Capacity Products ("your reseller(s)"), as applicable. For Passport Advantage Express transactions, you accept these terms by obtaining the Eligible Sub-Capacity Product(s) from IBM or a reseller.

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 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. 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 or your IBM Reseller. 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 than two years the Audit Reports and make these reports available to IBM
upon notice as specified in Section 5. 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. Compliance Verification

Upon reasonable notice, IBM may verify your compliance with this Attachment at all Passport Advantage site(s) and for all Eligible Virtualization Environments in which you use or install Eligible Sub-Capacity Products subject to the terms of this Attachment for any purpose. Such verification will be conducted in a manner that minimizes disruption to your business and may be conducted on your premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

You agree to create, retain, and provide to IBM and its auditors written records, system tool outputs, PoEs, and other system information sufficient to provide auditable verification to IBM that your installation and use of Eligible Sub-Capacity Products is in compliance with the terms of this Attachment, including, without limitation, all of IBM's applicable licensing and pricing qualification terms.

IBM will notify you in writing if any such verification indicates that you have used Eligible Sub-Capacity Products in excess of their authorized level of use or you are otherwise not in compliance with this Attachment. You agree to promptly pay directly to IBM i) the charges as IBM specifies in an invoice for any additional licenses equal to the quantity used in excess of authorized level of use and applicable Subscription and Support offerings, as applicable, for such licenses for the lesser of the time that such licenses have been used or two years, and ii) any additional charges and other liabilities determined as a result of such verification.

The rights and obligations set forth in this section remain in effect during the period the Eligible Sub-Capacity Product is licensed to you and for two years thereafter.

6. Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.
International Passport Advantage Agreement - Enrollment Form

Please provide all requested information in order to be enrolled or to update your information.

You enroll in, and obtain Eligible Products under, Passport Advantage subject to the terms of the IBM International Passport Advantage Agreement ("the Agreement") and the Attachment for Sub-Capacity Terms. IBM Programs that you obtain under this Agreement are governed by the terms of the IBM Program License Agreement ("IPLA"). If there is a conflict between the terms of the Agreement, including the Attachment for Sub-Capacity Terms, if applicable, and those of the IPLA, including its License Information document ("LI"), the terms of the Agreement prevail. A Non-IBM Program that you obtain under the Agreement 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.

By enrolling, you

1. acknowledge that you have had the opportunity to read and understand the Agreement, including the Attachment for Sub-Capacity Terms, and the IPLA before you completed this form; and

2. accept the terms of these documents* and represent and warrant that you have full authority to do so on behalf of the enrolling Site.

This enrollment is for (check one):

☐ Originating Site* ** ☐ Additional Site* ** ☐ Site Information Update

By checking the Originating Site box above, an Originating Site enrolling for the first time also accepts the terms of the Attachment for Sub-Capacity Terms. Originating Sites must check the box below if they have not already accepted the Attachment for Sub-Capacity Terms in a prior enrollment and wish to take advantage of Sub-Capacity Terms. Enter your Passport Advantage Agreement and Site numbers in the space provided below for updating existing Site information below, and submit. Only an Originating Site may check box below.

☐ Attachment for Sub-Capacity Terms

If this is an enrollment for an Originating Site**, please indicate customer type (check one***):

☐ Commercial

☒ Government***

☐ Academic Volume Option (Attachment for Academic Volume Option applies)

* Note: If you are an Additional Site, you accept the terms of the Attachment for Sub-Capacity Terms only if your Originating Site has already accepted these terms.

** Note: The Originating Site Primary Contact must, if applicable, complete and submit with their enrollment form, an Authorized Additional Site Schedule listing any and all potential Additional Sites. Failure to do so may result in delay in processing Additional Site enrollments. An Additional Site is required to be part of the Originating Site’s Enterprise as defined in Section 2 of the Agreement. By completing this form as an Additional Site, you certify that this requirement has been met.

*** Note: If you are a Government customer enrolling under Commercial terms, please check both "Government" and "Commercial" options above. If you are a Government customer and not enrolling under Commercial terms, the Attachment for Government Option applies.

If enrolling an Additional Site, please indicate Passport Advantage Agreement Number: _______________________

If updating existing Site information, please indicate Passport Advantage Agreement and Site numbers: S215-7024437

Please indicate which industry best describes your business:

☐ AEROSPACE & DEFENSE ☐ AUTOMOTIVE

☐ BANKS ☐ CHEMICAL & PETROLEUM

☐ COMPUTER SERVICES ☐ CONSUMER PRODUCT GOODS

☐ EDUCATION ☐ ELECTRONICS

☐ FINANCIAL MARKETS ☐ GOVERNMENT

☐ INSURANCE ☐ HEALTH

☐ LIFE SCIENCES ☐ MEDIA & ENTERTAINMENT

☐ OTHER PRODUCTION INDUSTRIES ☐ RETAIL

☐ TELECOMMUNICATIONS ☐ TRAVEL & TRANSPORTATION

☐ UTILITIES

☐ OTHER (Please Specify) .................................................................

How many people work in your company across all locations?

☐ 1-1,000 ☒ 1,000 Plus

Z125-6125-07 2/2005 MK002 Page 1 of 3
For each contact information box below, please complete all details, including the optional check box concerning promotional and marketing communications from IBM and its business partners. By completing this form and providing us with information on behalf of other individuals in your organization, you certify that you have confirmed that they agree to your providing their data on the form. If you indicate, for any of the contacts listed, that you or they DO wish to receive promotional and/or marketing material, we will use the contact information for these purposes too, as well as generally in connection with your Passport Advantage Agreement.

**Primary Contact (required):** The Primary Contact is to complete this form. IBM will communicate with you, the Primary Contact, regarding changes to the Agreement or other contractual issues. If the Primary Contact is the only contact specified, IBM may consider the Primary Contact to be the sole contact for all purposes. *(No Post Office Box addresses, please)* It is your responsibility to promptly notify IBM of any change of address, including e-mail address.

Please provide your full legal company name

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<tr>
<td>Jenny Shine</td>
<td>217-785-8856</td>
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E-mail Address: Jenny.Shine@Illinois.gov

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☐ Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.

**Administration Contact (if different from the Primary Contact above):** The person you designate in this information box is responsible for requesting and authorizing account information changes, Web and tool access, etc. In addition, IBM will send the Administration Contact documents including Software Maintenance Renewal notices, software upgrade availability notifications, Proofs of Entitlement, etc. You will have access to your Proofs of Entitlement online via Passport Advantage Online to confirm your authorized use of IBM software. Electronic Proofs of Entitlement will also be sent via e-mail to your Administration Contact and/or to your Business Partner when you obtain new licenses or renew Software Maintenance. *(No Post Office Box addresses, please)* Please provide your full legal company name It is your responsibility to promptly notify IBM of any change of address, including e-mail address.

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<tr>
<td><a href="mailto:Jenny.Shine@Illinois.gov">Jenny.Shine@Illinois.gov</a></td>
</tr>
</tbody>
</table>

☐ Yes, please use the contact information in the information box above for future marketing or promotional contacts or other communications beyond the scope of this Passport Advantage Agreement.
IBM Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

1. Disclosure
   Information will be disclosed either:

   1) in writing;
   2) by delivery of items;
   3) by initiation of access to Information, such as may be in a database; or
   4) by oral or visual presentation.

   Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

2. Obligations
   The Recipient agrees to:

   1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
   2) use the Discloser’s Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

   The Recipient may disclose Information to:

   1) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
   2) any other party with the Discloser’s prior written consent.

   Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

   The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

3. Confidentiality Period
   Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations
   The Recipient may disclose, publish, disseminate, and use Information that is:

   1) already in its possession without obligation of confidentiality;
   2) developed independently;
   3) obtained from a source other than the Discloser without obligation of confidentiality;
   4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
   5) disclosed by the Discloser to another without obligation of confidentiality.

   The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser’s Information which are retained in the memories of Recipient’s employees who have had access to the Information under this Agreement, unless Recipient is specifically informed by Discloser in advance that such use is not permitted.
5. **Disclaimers**

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. **General**

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

1) providing to others products or services which may be competitive with products or services of the Discloser;

2) providing products or services, or discussing or strategizing about the needs of the Recipient with or to others who compete with the Discloser; or

3) assigning its employees in any way it may choose.

The Recipient will 1) comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations, and 2) unless authorized by applicable governmental license or regulation, not directly or indirectly export or re-export any technical information or software subject to this Agreement (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations. This paragraph will survive the termination or expiration of this Agreement and the confidentiality period above and will remain in effect until fulfilled.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement, unless it is included as part of a specific contract and in that case it cannot be terminated unless the entire contract is terminated, by providing one month’s written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of the State of Illinois to govern, interpret, and enforce all of your and our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to: 

By 

Authorized Signature 

Name (type or print): 
Date: 
Identification number: 
Address:

Agreed to: 

By 

Authorized Signature 

Name (type or print): 
Date: 
Agreement number: 
IBM address:
IBM Customer Agreement
Attachment for Parallel Sysplex License Charges

These terms are in addition to those of the IBM Customer Agreement. You accept these terms by signing the Signature Page for Attachments or making any payment for Programs utilizing the charging structure described below. Any Programs licensed in accordance with the terms of this Attachment 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.

Parallel Sysplex license charges (called "PSLC") available under this Attachment are provided for selected IBM System z Programs when these Programs are designated to a machine or machines operating in an actively coupled Parallel Sysplex environment.

1. Our Responsibilities
   We will:
   1. make selected System z Programs available to you at PSLC; and
   2. specify, in an exhibit, the Parallel Sysplex environment (machine requirements, coupling criteria, and software requirements) and the basis for PSLC (the service unit capacity of participating machines). We will inform you of any changes.

2. Your Responsibilities
   You agree to promptly notify us:
   1. when you have an actively coupled Parallel Sysplex environment;
   2. if the Parallel Sysplex environment ceases to be actively coupled. In such case, charges will revert to our generally available recurring charges; and
   3. if you add or remove machines from the environment. In such cases, the PSLC will be adjusted.
Certificate of Registration

STATE BOARD OF ELECTIONS

Registration No. 12334

International Business Machines Corporation
1 New Orchard Road
Armonk NY 10504

Information for this business last updated on:
Wednesday, June 01, 2011

Certificate produced on Friday, July 08, 2011 at 10:40 AM
TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person (including a U.S. resident alien).

   • If you are an individual, enter your name and SSN as it appears on your Social Security Card.
   • If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
   • If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the dba on the business name line and enter the owner's SSN or EIN.
   • If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
   • For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: __________________________________________

Business Name: IBM

Taxpayer Identification Number:
   Social Security Number ____________________________
   or
   Employer Identification Number 13-0871985

Legal Status (check one):

☐ Individual
☐ Governmental
☐ Sole Proprietor
☐ Nonresident alien
☐ Partnership
☐ Estate or trust
☐ Legal Services Corporation
☐ Pharmacy (Non-Corp.)
☐ Tax-exempt
☐ Pharmacy/Funeral Home/Cemetery (Corp.)
☐ Corporation providing or billing medical end/or health care services
☐ Limited Liability Company (select applicable tax classification)
   ☐ D = disregarded entity
   ☐ C = corporation
   ☐ P = partnership
☐ Corporation NOT providing or billing medical end/or health care services

Signature: ________________________________ Date: 7-31-11

Mark R. Jones
STATE OF ILLINOIS
FINANCIAL DISCLOSURES AND CONFLICTS OF INTEREST

The Financial Disclosures and Conflicts of Interest form ("form") must be accurately completed and submitted by the vendor, parent entity(ies), and subcontractors. There are nine steps to this form and each must be completed as instructed in the step heading and within the step. A bid, offer, or proposal that does not include this form shall be considered non-responsive. The Agency/University will consider this form when evaluating the bid, offer, or proposal or awarding the contract.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the disclosure is no longer accurate, then disclosing entities must provide an updated form.

Separate forms are required for the vendor, parent entity(ies), and subcontractors.

**This disclosure is submitted for:**

- [ ] Vendor
- [ ] Vendor’s Parent Entity(ies) (100% ownership)
- [ ] Subcontractor(s) >$50,000
- [ ] Subcontractor’s Parent Entity(ies) (100% ownership) > $50,000

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<td>International Business Machines Corporation</td>
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<td>International Business Machines Corporation</td>
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<td>Subcontractor</td>
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<tr>
<td>Instrument of Ownership or Beneficial Interest</td>
<td>Choose an item. [ ] If you selected Other, please describe:</td>
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STEP 1
SUPPORTING DOCUMENTATION SUBMITTAL
(All vendors complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

You must select one of the six options below and select the documentation you are submitting. You must provide the documentation the applicable section requires with this form.

☐ Option 1 – Publicly Traded Entities

1.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% ($106,447.20) of the annual salary of the Governor.

OR

1.B. ☑ Attach a copy of the Federal 10-K, and skip to Step 3.

☐ Option 2 – Privately Held Entities with more than 200 Shareholders

2.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% ($106,447.20) of the annual salary of the Governor.

OR

2.B. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership share in excess of 5% and attach the information Federal 10-K reporting companies are required to report under 17 CFR 229.401.

☐ Option 3 – All other Privately Held Entities, not including Sole Proprietorships

3.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% ($106,447.20) of the annual salary of the Governor.

☐ Option 4 – Foreign Entities

4.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% ($106,447.20) of the annual salary of the Governor.

OR

4.B. ☐ Attach a copy of the Securities Exchange Commission Form 20-F or 40-F and skip to Step 3.

☐ Option 5 – Not-for-Profit Entities

☐ Complete Step 2, Option B.

☐ Option 6 – Sole Proprietorships

☐ Skip to Step 3.
Complete either Option A (for all entities other than not-for-profits) or Option B (for not-for-profits). Additional rows may be inserted into the tables or an attachment may be provided if needed.

**OPTION A – Ownership Share and Distributive Income**

**Ownership Share** – If you selected Option 1.A., 2.A., 2.B., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of ownership if said percentage exceeds 5%, or the dollar value of their ownership if said dollar value exceeds $106,447.20.

☐ Check here if including an attachment with requested information in a format substantially similar to the format below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Percentage of Ownership</th>
<th>$ Value of Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Click here to enter text.</td>
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</tbody>
</table>

**Distributive Income** – If you selected Option 1.A., 2.A., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of the disclosing vendor’s total distributive income if said percentage exceeds 5% of the total distributive income of the disclosing entity, or the dollar value of their distributive income if said dollar value exceeds $106,447.20.

☐ Check here if including an attachment with requested information in a format substantially similar to the format below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>% of Distributive Income</th>
<th>$ Value of Distributive Income</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
Please certify that the following statements are true.

I have disclosed all individuals or entities that hold an ownership interest of greater than 5% or greater than $106,447.20.

☐ Yes ☐ No

I have disclosed all individuals or entities that were entitled to receive distributive income in an amount greater than $106,447.20 or greater than 5% of the total distributive income of the disclosing entity.

☐ Yes ☐ No

OPTION B – Disclosure of Board of Directors (Not-for-Profits)

If you selected Option 5 in Step 1, list members of your board of directors. Please include an attachment if necessary.

<table>
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<tr>
<th>Name</th>
<th>Address</th>
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<tbody>
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STEP 3
DISCLOSURE OF LOBBYIST OR AGENT
(Complete only if bid, offer, or contract has an annual value over $25,000)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

☑ Yes ☐ No. Is your company represented by or do you employ a lobbyist required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or other agent who is not identified through Step 2, Option A above and who has communicated, is communicating, or may communicate with any State/Public University officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.

If you have a lobbyist that does not meet the criteria, then you do not have to disclose the lobbyist’s information.

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Relationship to Disclosing Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jay D. Doherty</td>
<td>210 E Pearson Suite 9-B</td>
<td>Contractual Lobbyist</td>
</tr>
<tr>
<td></td>
<td>Chicago, IL 60611</td>
<td></td>
</tr>
</tbody>
</table>

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain this Agency/University contract:

Jay Doherty is paid $6800 per month by IBM. IBM's Lobbyist listed above neither communicated with any State officer or employee nor was involved in any aspect of this contract transaction.
STEP 4

PROHIBITED CONFLICTS OF INTEREST

(All vendors must complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided: Click here to enter text.

1. Do you hold or are you the spouse or minor child who holds an elective office in the State of Illinois or hold a seat in the General Assembly? □ Yes □ No

2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% ($106,447.20) of the salary of the Governor? □ Yes □ No

3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority? □ Yes □ No

4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor? □ Yes □ No

5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor’s total distributable income or an amount of distributable income in excess of the salary of the Governor ($177,412.00)? □ Yes □ No

6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% ($354,824.00) in the aggregate of the vendor’s distributable income or an amount of distributable income in excess of two times the salary of the Governor? □ Yes □ No

STEP 5

POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS

(Complete only if bid, offer, or contract has an annual value over $35,000)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided: Click here to enter text.

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services? □ Yes □ No

2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years? □ Yes □ No
3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois? □ Yes □ No

4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years? □ Yes □ No

5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that? □ Yes □ No

6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years? □ Yes □ No

7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government? □ Yes □ No

8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist? □ Yes □ No

9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? □ Yes □ No

10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? □ Yes □ No

**STEP 6**

**EXPLANATION OF AFFIRMATIVE RESPONSES**

(All vendors must complete regardless of annual bid, offer, or contract value)

(Subcontractors with subcontract annual value of more than $50,000 must complete)

If you answered “Yes” in Step 4 or Step 5, please provide on an additional page a detailed explanation that includes, but is not limited to the name, salary, State agency or university, and position title of each individual.
STEP 7
POTENTIAL CONFLICTS OF INTEREST RELATING TO DEBARMENT & LEGAL PROCEEDINGS
(Complete only if bid, offer, or contract has an annual value over $25,000)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

This step must be completed for each person disclosed in Step 2, Option A, Step 3, and for each entity and sole proprietor disclosed in Step 1.

Please provide the name of the person or entity for which responses are provided: International Business Machines Corporation

1. Within the previous ten years, have you had debarment from contracting with any governmental entity? □ Yes □ No

2. Within the previous ten years, have you had any professional licensure discipline? □ Yes □ No

3. Within the previous ten years, have you had any bankruptcies? □ Yes □ No

4. Within the previous ten years, have you had any adverse civil judgments and administrative findings? □ Yes □ No

5. Within the previous ten years, have you had any criminal felony convictions? □ Yes □ No

If you answered “Yes”, please provide a detailed explanation that includes, but is not limited to the name, State agency or university, and position title of each individual.

The company is involved in a variety of claims, suits, investigations and proceedings that arise from time to time in the ordinary course of its business, including actions with respect to contracts, intellectual property, product liability, employment, benefits, securities and environmental matters. These actions may be commenced by a number of different constituents, including competitors, partners, clients, current or former employees, government and regulatory agencies, stockholders and representatives of the locations in which the company does business. However, IBM is not currently involved in any litigation that will (1) materially affect IBM's financial stability; or (2) materially affect our ability to perform our obligations if we are awarded this contract. Further details may be obtained in Note N, Contingencies and Commitments to the IBM Annual Report which can be viewed at www.ibm.com/annualreport.
STEP 8
DISCLOSURE OF CURRENT AND PENDING CONTRACTS
(Complete only if bid, offer, or contract has an annual value over $25,000)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

If you selected Option 1, 2, 3, 4, or 6 in Step 1, do you have any contracts, pending contracts, bids, proposals, subcontracts, leases or other ongoing procurement relationships with units of State of Illinois government?
✓ Yes □ No.

If “Yes”, please specify below. Attach an additional page in the same format as provided below, if desired.

Please see attached document.

<table>
<thead>
<tr>
<th>Agency/University</th>
<th>Project Title</th>
<th>Status</th>
<th>Value</th>
<th>Contract Reference/P.O./Illinois Procurement Bulletin #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Click here to enter text.</td>
<td>Click here to enter text.</td>
<td>Click here to enter text.</td>
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<td>Click here to enter text.</td>
</tr>
</tbody>
</table>

Please explain the procurement relationship: Click here to enter text.
STEP 9
SIGN THE DISCLOSURE
(All vendors must complete regardless of annual bid, offer, or contract value)
(Subcontractors with subcontract annual value of more than $50,000 must complete)

This disclosure is signed, and made under penalty of perjury for all for-profit entities, by an authorized officer or employee on behalf of the bidder or offeror pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code. This disclosure information is submitted on behalf of:

Name of Disclosing Entity: International Business Machines

Signature: Mark R. Townsend

Date: July 8, 2013

Printed Name: Mark R. Townsend

Title: Client Manager

Phone Number: 217-547-0036

Email Address: mrtowns@us.ibm.com
<table>
<thead>
<tr>
<th>Agency/University</th>
<th>Project Title</th>
<th>Status</th>
<th>Value</th>
<th>Contract Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>State University Retirement System</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$1,744.20</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Central Management Services</td>
<td>Hardware maintenance Time and Materials</td>
<td>Current</td>
<td>$2,200,000</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Central Management Services</td>
<td>Hardware maintenance Fixed Price</td>
<td>Pending</td>
<td>$2,474,870.60</td>
<td>CMS366703B</td>
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<td>Office of the Comptroller</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$54,454.16</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Children and Family Services</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$1,356.78</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Department of Human Rights</td>
<td>Hardware maintenance Time and Materials</td>
<td>Current</td>
<td>$80,000.00</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Emergency Management Agency</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$3,468.58</td>
<td>CMS366703B</td>
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<tr>
<td>Illinois Housing Development Authority</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$1,199.32</td>
<td>CMS366703B</td>
</tr>
<tr>
<td>Student Assistance Commission</td>
<td>Hardware maintenance Fixed Price</td>
<td>Current</td>
<td>$84,877.23</td>
<td>CMS366703B</td>
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<tr>
<td>State Police</td>
<td>Hardware maintenance Fixed Price</td>
<td>Pending</td>
<td>$100,000.00</td>
<td>CMS366703B</td>
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<tr>
<td>Secretary of State</td>
<td>Hardware maintenance Fixed Price</td>
<td>Pending</td>
<td>$51,850.42</td>
<td>CMS366703B</td>
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<td>Central Management Services</td>
<td>IBM Enterprise License Agreement (ELA) SS</td>
<td>Current</td>
<td>$27,087,348</td>
<td>CMS2622960</td>
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<td>Central Management Services</td>
<td>IBM Enterprise License Agreement (ELA) SS</td>
<td>Pending</td>
<td>$32,000,000</td>
<td>CMS4790360</td>
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<tr>
<td>Central Management Services</td>
<td>IBM Disaster Recovery Contract</td>
<td>Current</td>
<td>$0</td>
<td>CMCE401121</td>
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<tr>
<td>Illinois State Police</td>
<td>IBM Disaster Recovery Contract</td>
<td>Current</td>
<td>$32,500</td>
<td>CMCE401121</td>
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<td>IBM Disaster Recovery Contract</td>
<td>Current</td>
<td>$143,750</td>
<td>CMCE401121</td>
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<td>Secretary of State</td>
<td>IBM Disaster Recovery Contract</td>
<td>Current</td>
<td>$348,000</td>
<td>CMCE401121</td>
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<td>Secretary of State</td>
<td>IBM Mainframe Software</td>
<td>Current</td>
<td>$17,555,230</td>
<td>12IT023047</td>
</tr>
<tr>
<td>Secretary of State</td>
<td>IBM Mainframe Software</td>
<td>Current</td>
<td>$1,354,687</td>
<td>12IT023048</td>
</tr>
<tr>
<td>Central Management Services</td>
<td>IBM TSM Accelerated Value program</td>
<td>Current</td>
<td>$183,500</td>
<td>CIC3775930</td>
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<tr>
<td>Central Management Services</td>
<td>IBM WTX Accelerated Value program</td>
<td>Current</td>
<td>$164,500</td>
<td>CIC3698490</td>
</tr>
</tbody>
</table>
### INSTALLMENT PAYMENT SUPPLEMENT

**Address of Customer**
IL CNTRAL MANAGEMENT SVC  
201 WEST ADAMS ST  
SPRINGFIELD, IL 62704-1874

**Installed at Location**
IL CNTRAL MANAGEMENT SVC  
201 WEST ADAMS ST  
SPRINGFIELD, IL 62704-1874

**Customer No.** 4504021  
**IBM CSO Location** 1EO  
**Installment Payment** ELA0607  
**IPMA Amendment No.** 080113  
**Referenced Quote Letter No.** Q0325812208

**Supplement No.** 100029923  
**Referenced Purchase Agreement No.**  
**Referenced License Agreement No.**  
**Referenced Trade-In Agreement No.**  
**Associated Supplement No.**  
**Addendum No.** 100029923

**Location**  
**Machine** IBM ELA FINANCING  
**IBM Plant** H043195  
**Customer Order or LPM Number** 4504021  
**Type/Model Feature** 9993/ELA  
**Serial Number** 2794002  
**Description**

<table>
<thead>
<tr>
<th>Line No.</th>
<th>IBM/IMPA Number</th>
<th>Description</th>
<th>Purchase Price or One-Time Charges or Other Amount</th>
<th>Credit (From IBM Trade-In Agreement and/or Down Payment)</th>
<th>State and Local Taxes</th>
<th>Payment Amount</th>
<th>Interest Rate</th>
<th>Payment Amount</th>
</tr>
</thead>
<tbody>
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<td>4504021</td>
<td>IBM ELA FINANCING</td>
<td>8,013,778.25</td>
<td>8,013,778.25</td>
<td></td>
<td>11.9</td>
<td>S' 4</td>
<td>7/31/13</td>
</tr>
</tbody>
</table>

**Estimated Installation Date or Intended Financing Date or Effective Date of Additional License**  
**Planning Date** 7/31/13

****Payment Obligation is as stated in the Enterprise Software and Services Option with a Start Date of August 1, 2013, the State of Illinois and International Business Machines Corporation. In the event of a conflict between this Installment Payment Supplement and the Enterprise Software and Services Option (the "ESSO"), the ESSO shall prevail.

---

**Convenient Pay Program is Required [ ]**

**Guaranty is required [ ]**

**TOTAL FROM ALL PAGES:**

**PURCHASE PRICE OR ONE TIME CHARGES OR OTHER AMOUNT** $3,013,778.25

**INTEREST**

**AMOUNT FINANCED** $8,013,778.25

---

**TAX ON FINANCE CHARGE**

**WHEN APPLICABLE THIS TAX IS PAYABLE WITH FIRST INSTALLMENT**

---

**STATE OF ILLINOIS**

**By:**

**Signature:**

**Name:** Malcolm Dickens, Jr.  
**Title:**  
**State of Organization:** IL  
**Date:** 7/31/13

---

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

**By:**

**Signature:**

**Name:**  
**Title:**  
**State of Organization:**  
**Date:**
OPTION CODES
OPTION I - Loan for a Machine or a Modification.
OPTION IG - Loan for a Machine or a Modification for State & Local Government Customers.
OPTION R - Loan for a used Machine supplied by IBM Credit LLC.
OPTION RG - Loan for a used Machine supplied by IBM Credit LLC for State & Local Government Customers.
OPTION S - Loan for an IBM Program or Service.
OPTION SG - Loan for an IBM Program or Service for State & Local Government Customers.
OPTION T - Loan for a non-IBM Program or Service.
OPTION TG - Loan for a non-IBM Program or Service for State & Local Government Customers.

STATE AND LOCAL CUSTOMERS (FOR OPTIONS IG, SG, and T): The interest rates applicable to this Supplement are based on many factors including your underlying obligation qualifying to pay interest that is exempt from the Internal Revenue Service (IRS) from federal income tax under Section 103(a) of the Internal Revenue Code (Code), as well as many proprietary factors including pricing assumptions made by us as to whether we anticipate being able to recognize any benefits of this tax exemption. Accordingly, you represent that you qualify as a State or political subdivision of a State for purposes of Section 103(a) and that you will not allow the use of the Product, Modification or Service by the federal government or in a trade or business carried on by any person or entity other than a governmental unit (collectively, "private business use"). You agree that any misrepresentation of your status under Section 103(a) or allowance of private business use is an event of default under this Agreement.

You further agree to comply promptly with all information reporting requirements of Code Section 149(q) and Treasury Regulations thereunder. You also agree to file Internal Revenue Service Form 8283-G or 8283-Q, whichever appropriate, for this transaction. If you do not file the above (RS) form on a timely basis, or you are unable upon request to demonstrate that the IRS has determined you are qualified under Section 103(a) of the Code, or you allow private business use of the Product, Modification or Service, then you shall pay us an amount determined by us that will return to us any interest and cash rebate that we otherwise would have received if the interest had qualified for exemption from federal taxation under Section 103(a) of the Code. Our interest in this Supplement, and the payments hereunder may be assigned and reassigned without your consent; provided that any assignment shall not be effective until you have written notice, signed by the assignor, containing the name, address and tax identification number of the assignee or subassignee. You shall keep copies of all such notices and make payments to the current assignee(s). The interest rates applicable to this Supplement may include product discounts that are provided to us by your Suppliers and passed on to you in the form of lower rates.

FINANCED PRODUCTS AND SERVICES. We reserve the right to reject any invoice that is: (i) not for Information Technology Products or Services, or (ii) dated more than 90 days prior to the date we receive authorization from you to finance.

PREPAYMENT AND PREPAYMENT FEE
Section 3.5 - Prepayment - replace the fourth sentence with: “You may prepay any Transaction by paying all outstanding amounts due plus any accrued interest charges not yet billed, the remaining principal balance and any prepayment fee.”

The prepayment fee shall be the sum of our unrecovered administrative expense and any change to our funding costs. The unrecovered administrative expense portion of the prepayment fee will be determined using a factor of 2.50% multiplied by the remaining Transaction principal. The change in funding costs portion of the prepayment fee will: a) only be incurred if interest rates, based upon the 2-year Treasury Rate plus 325 basis points, as determined by the Federal Reserve, from the date interest starts to the date of the prepayment and b) if Incurred, be determined using a factor of 2.50 multiplied by the change in the 3-year Treasury Rates and then multiplied by the remaining Transaction principal. The 2.50 factor will decrease with the number of months remaining in the original term of the Agreement.

WARRANTY DISCLAIMER
Any warranties associated with Products or Services chosen by you and financed by us may be subject to the terms under any applicable agreement between you and the provider of such Products or Services. UNLESS OTHERWISE EXPRESSED IN WRITING, WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND YOU TAKE THE PRODUCTS AND/or SERVICES "AS IS". IN NO EVENT WILL WE HAVE ANY LIABILITY

Supplement Number 10023925

FOR NO REMEDY UNDER THIS AGREEMENT AGAINST US FOR CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS OR SAVINGS, LOSS OF USE, OR ANY OTHER COMMERCIAL LOSS.

The following amend the Installment Payment Master Agreement referenced on page 1.

Section 1.1. - Definitions - Date of Installation for a Program - replace item b, with the following: "the second business day after the Program's standard transit allowance period;".

Section 4.1. - Events of Default - add the following: "8. you make any misrepresentation relating to information or invoices you provide to us, 9. you use any funds you receive from us for any purpose other than to acquire the specific Product herein; 10. any authorized direct debit entry from your business deposit account is rejected for any reason; 11. any guarantee of or guarantee provided to us shall cease to be, or shall be asserted by guarantor not to be in full force and effect.;"

Section 4.2. - Remedies - at the end of the first paragraph add the following: "6. require you to surrender to us for return to licensor or owner all licensed program materials financed hereunder and to destroy any and all copies thereof."

The end of the Section add a new paragraph to read as follows: "If there is a conflict of terms among the documents the order of precedence will be as follows: (a) attachments or addenda to this Supplement, (b) Supplement, (c) attachments or addenda to the Agreement, (d) the Agreement.

The following new section is inserted: "Convenient Pay: Guaranty. When Convenient Pay is required on the first page of this Agreement, you agree to provide us with a Convenient Pay Program Authorization ("CPP") executed by you, in form and substance satisfactory to us, authorizing us to electronically debit from your specified business deposit account any and all payments owed to us under this Agreement. When a guaranty is indicated, your guarantor must sign a guaranty to this Agreement in form and substance acceptable to us."

Terms for non-IBM Equipment and for Equipment not sourced from IBM: when non-IBM Equipment and/or a Supplier other than IBM is specified on the front of this Supplement, these terms apply.

Section 2.1 - Machines - replace the first sentence with the following: "We finance charges for Machines you purchase from us or your supplier.".

Section 2.2 - Modifications and Additions - replace the first sentence with the following: "We finance charges for Modifications and Additions purchased from IBM or your supplier."

Section 2.3 - Other Charges - add the following to the end of the section: "We may agree to finance one-time charges from your supplier.".

Section 2.4 - Discounts, Allowances and Adjustments - replace the first sentence with the following: "The purchase price and charge we finance is the same amount that you would have paid us or your supplier after all discounts and adjustments.".

Section 2.5 - Interest Computations - replace the entire section with the following: "Unless otherwise specified, interest is calculated on Options I, R, S and T. IBM starts on the acceptance date indicated on a certificate of acceptance; for Options IG, RG, RS and T, interest starts on the first day of the month following the acceptance date indicated on a certificate of acceptance."

Z25-4363-52 (07/12)
**IBM CREDIT LLC**  
**IPMA PAYMENT SCHEDULE**

Customer Name: STATE OF ILLINOIS  
Reference Number: Q03258122-08  
Date: 2013-07-30

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<td>PAYMENT START DATE:</td>
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Payment Schedule calculations are based on the Planned Install Date, the Interest Commencement Date and reflect any downpayments. Payments and charges resulting from loan prepayment prior to the stated end of term, will be based on the actual Install Date and Interest Commencement Date. The payments on this schedule reflect waiver of the Installment Payment Master Agreement prepayment fee provisions.

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ADDENDUM TO INSTALLMENT PAYMENT SUPPLEMENT

Enterprise No. 4502000
Customer No. 4504021

Installment Payment Master Agreement No. IELA0607
Supplement No. I0002895

We and STATE OF ILLINOIS (You) agree that for the purposes of the referenced Supplement only, the Installment Payment Master Agreement between the parties is hereby modified as follows:

On the Additional Terms and Conditions page of the Installment Payment Master Agreement ("IPMA") Supplement delete the sections entitled "Section 2.1 Machines" and "Section 2.2 Modifications and Additions" in their entirety from the section entitled "Terms for non-IBM Equipment and for Equipment not sourced from IBM; when non-IBM Equipment and/or a Supplier other than IBM is specified on the front of this Supplement, these terms apply."

Section 3.3 - Invoicing - On the Installment Payment Master Agreement ("IPMA"), delete the section entitled "3.3 Invoicing" in its entirety.

Section 3.5 - Prepayment - is deleted in its entirety and replaced with the following:

"If the Enterprise Software & Services Offering between you and us, effective with a Start Date of 8/1/2013 (as amended, supplemented or otherwise modified from time to time, the "ESSO") is terminated for any reason prior to 7/31/2014 then upon the date of such termination, the "Termination Date", you shall pay an amount equal to the sum of all remaining payments due or to become due up to and including the payment due 5/1/2014 (the "Prepayment Charge") as specified in the ESSO."

Section 4.2 - Remedies - after item 5 insert the following:

"In addition to the remedies available to us upon your default under this Agreement, as of the date of such default ("Date of Default"), you shall pay the Prepayment Charge as specified above."

Section 4.3 - Security Interest - On the Installment Payment Master Agreement ("IPMA"), delete the section entitled "4.3 Security Interest" in its entirety. On the back of the Supplement, delete the provisions entitled "Section 4.3- Security Interest" in its entirety.

Prepared by: Ronald Powell

Accepted by: IBM Credit LLC

STATE OF ILLINOIS

by

Authorized Signature

Date

Authorized Signature

Date

NO CHANGES TO THIS ADDENDUM ARE AUTHORIZED

Page 1

July 30, 2013
Installment Payment Master Agreement
State and Local Government

Thank you for doing business with us. We are committed to providing you with the highest quality financial offerings. If, at any time, you have any questions or problems, please let us know.

This Installment Payment Master Agreement (called the “Agreement”) covers the terms and conditions under which we finance various charges.

This Agreement has four parts:

Part 1 - Definitions;
Part 2 - Our Offerings;
Part 3 - Payment; and
Part 4 - General.

The specific amount financed, the interest rate charged, and the period over which the amount is financed are together referred to as an Installment Payment Transaction (called the "Transaction"). Each Transaction is listed as a separate line item on a Supplement to this Agreement. A Supplement may contain additional terms for its Transactions. You agree to those terms by signing the Supplement. Each Transaction is contingent upon a review of your credit by us.

This Agreement and its applicable Supplements are the complete agreement regarding the Transactions and replace any prior oral or written communications between both parties.

By signing below, both parties agree to the terms of this Agreement. Once signed, any reproduction of this Agreement or a Supplement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:
STATE OF ILLINOIS

By ______________ Authorized Signature

Name (type or print):

Date:

Customer number: 4504021

Customer Address:
DEPT OF CENT MGMT SVCS
201 WEST ADAMS ST
SPRINGFIELD, IL 62704-1874

Agreed to:
International Business Machines Corporation
Amonk, New York 10504

By ______________ Authorized Signature

Name (type or print):

Date:

Agreement number: IE3A0607

IBM Office number: 1EO

IBM Office address:
TWO LINCOLN CENTRE
OAK BROOK TERR, IL 60181-4295
Installment Payment Master Agreement

Part 1 - Definitions

State and Local Government

1.1 Definitions

Addition is any Machine or Program associated with a Machine previously financed under this Agreement.

Customer-set-up Machine is an IBM Machine that you set up according to IBM instructions.

Date of Installation is the following:

1. for a Machine -
   a. the business day after the day we install it or, if you defer installation, make it available to you for installation; or
   b. the second business day after the end of the standard transit allowance period for a Customer-set-up Machine or a non-IBM Machine.

2. for a Program, the latest of -
   a. the day after its testing period ends;
   b. 10 days after we ship it; or
   c. the day you are authorized to make an Additional License Copy or a copy of a Distributed Feature.

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. We use the terms "IBM Machine" and "non-IBM Machine" if applicable.

Modification is any IBM field installable upgrade, feature or accessory added to any Machine.

Planning Date is the date stated in the Supplement that financing for each Transaction is scheduled to begin. For a Machine, it is the estimated date the Machine will be put into service. For a Program, it is the estimated Date of Installation. For all other financed charges, it is the date you choose for the financing to begin.

Product is a Machine or a Program.

Program is all the following, including features and any whole or partial copies:

1. machine-readable instructions;
2. a collection of machine-readable data, such as a data base; and
3. related materials, including documentation and listings, in any form.

Service is assistance or use of a resource (such as a network).

Term is the number of payment periods stated in the Supplement. The Term of a Transaction begins on the date interest starts. It ends on the last day of the last payment period. If you prepay a Transaction, its Term ends when you complete the prepayment.

You and Your refer to you, the Customer. You must be a State or a Political Subdivision as defined by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any Regulations and Rulings that affect that section.

We, Us and Our refer to:

1. International Business Machines Corporation (IBM), its subsidiaries and affiliates;
2. a partnership in which IBM is a partner; or
3. a business enterprise for which IBM is an agent.

IBM will remain as the active manager for all matters under this Agreement.
2.1 Machines

We finance charges for Machines you purchase from us. For a Machine we finance, you agree to:

1. keep the Machine free from encumbrances of any kind, except those established by us under this Agreement, or by you with our prior written consent;
2. promptly pay all taxes, interest, and other charges associated with the Machine, excluding taxes based on our net income; and
3. keep the Machine in good operating condition.

2.2 Modifications and Additions

We finance charges for Modifications and Additions you purchase from us. For Modifications and Additions we finance, you agree to:

1. ensure that the Machine with which the Modifications and Additions will be associated is free from encumbrances of any kind, except those established by us under this Agreement; and
2. keep modified Machines and Additions to them in accordance with the requirements of Section 2.1.

We may offer to refinance a Machine when we finance a Modification to it. Changes to the Annual Interest Rate, Payment Amount, and Term will then be specified in a new Supplement.

2.3 Other Charges

We finance one-time charges for IBM Programs and Services. Your obligation to make payments is not affected by the termination of any Service or license for a Program, unless such termination occurs before the date interest starts.

We may agree to finance other one-time charges associated with the installation of IBM Products.

2.4 Discounts, Allowances and Adjustments

The purchase price or one-time charge we finance is the same amount that you would have paid us after all discounts and adjustments. If this amount changes after you sign the Supplement and before the date interest starts, we will adjust the Supplement accordingly and notify you.
3.1 Your Obligation to Pay

You will pay all amounts specified in the Supplement. Payments will be made through the IBM Branch Office unless we notify you otherwise.

Your obligation to pay will continue regardless of any dispute you may have with respect to the financed Products or Services.

You agree to periodically request the appropriation of funds to pay all Payment Amounts specified in the Supplement. If the funds you request for any future fiscal year are not appropriated, you will not be obligated to pay amounts due beyond the end of the last funded fiscal year. If this happens, you agree to notify us in writing. Each affected Transaction will end after the last funded fiscal year and you will not be in default. You may retain the Machines for a reasonable period of time and at a monthly charge which we will determine. We will then remove the Machines from your premises and retain all sums paid as partial payment for their use and depreciation.

3.2 Interest Commencement

Unless otherwise specified in the Supplement, interest starts on:

1. the first day of the month following the Date of Installation for Products and Services you obtain from us; or
2. the first day of the month specified in the Supplement for all other charges.

3.3 Invoicing

Payment Amounts for monthly payment periods are invoiced as of the first day of each calendar month and are due on the first day of the following month.

Payment Amounts for all other payment periods (for example, annual) are invoiced 30 calendar days before the end of their payment period and are due on the day following the close of the respective payment period.

3.4 Rate Protection

The Supplement states a Planning Date for each Transaction, and one Quote Validity Date for all Transaction rates on the Supplement. These rates are not subject to change provided that:

1. the Supplement is signed and returned to us by the Quote Validity Date; and
2. the Product is installed within the same calendar month as its Planning Date.

3.5 Prepayment

We will not charge any loan origination fees. If you decide to prepay a Transaction, you agree to pay us a prepayment fee for our unrecovered administrative expense and changes in funding costs. The Supplement describes how the prepayment fee is determined. You may prepay any Transaction by paying all outstanding amounts due plus the remaining principal balance and any prepayment fee. If you prepay a Transaction for a Machine, you must also prepay any Transaction for related non-IBM charges.
4.1 Events of Default

You will be in default if:

1. you do not pay any amount within seven days after its due date;
2. you fail to maintain insurance as required under this Agreement;
3. you make any misrepresentation in a credit application you give us;
4. you make an assignment for the benefit of creditors, or you consent to the appointment of a trustee or receiver, or either is appointed for you or for a substantial part of your property without your consent;
5. any petition or proceeding is filed by or against you under any bankruptcy, insolvency, or similar law; or
6. you breach any other provision of this Agreement and that breach continues for fifteen days after you receive written notice from us.

4.2 Remedies

If you are in default, we may do one or more of the following:

1. declare the Transaction and all associated Transactions to be in default;
2. recover from you all amounts that are or will be due;
3. repossess or render unusable any or all Machines, Modifications, or Additions without demand, notice, court order, or other process, and retain all payments made as partial compensation for their use and depreciation;
4. require you, at your expense, to assemble and ship any Machine, Modification, or Addition to a location we specify; and
5. recover from you reasonable attorney's fees and legal expenses incurred in exercising any of our rights under this Agreement.

If we repossess a Modification, it is your responsibility to restore the remaining Machine to good working order. We have no liability for costs or damages caused by the removal of such Modification or by your failure to fulfill your responsibilities.

Upon repossession or return of a Machine, Modification, or Addition, we will dispose of it in a commercially reasonable manner. After deducting our expenses for the repossession and disposition, we will apply the net proceeds toward the amounts due. You will pay us any deficiency between the net proceeds and the unpaid amounts due. We will pay to you any excess net proceeds.

We may pursue any other remedy available at law or in equity.

4.3 Security Interest

We reserve a purchase money security interest in each Machine we finance, its substitutions, replacements, accessions, Modifications, Additions and any associated proceeds until we receive all amounts due. You will cooperate with us to perfect our security interest.

You authorize us to act as your agent and attorney-in-fact for the limited purpose of preparing, executing in your name, and filing on your behalf, financing statements or other documents covering Machines, Modifications, and Additions financed by us.

Each Machine must be kept at the location specified in this Agreement, where we may inspect it at any reasonable time. Each Machine will remain personal property, and will not become a fixture to real property. Until your financial obligation on a Transaction is satisfied, you may not modify or otherwise dispose of the Machine, Modification, or Addition, in whole or in part, without our prior written consent.
4.4 Insurance

You will maintain insurance covering loss, theft, conversion, damage, and destruction (called a "Loss") for any Machine, Modification, or Addition that we finance under this Agreement. You will endorse the policy naming us and our assigns as Loss Payee. Upon our request, you will provide us with proof of such insurance.

If a Machine, Modification or Addition suffers a Loss before we receive all payments, you will promptly notify us. Upon our request, you will pay us the prepayment amount as of the date of the occurrence. You agree to prepay all related non-IBM charges at the same time. We will credit you with any insurance payments that are in excess of the prepayment amount. Your obligation to pay us will continue until we are paid in full.

4.5 Assignment and Relocation

You may not assign this Agreement or your rights under it, or delegate your obligations. Any attempt to do so is void. You may not sell, transfer, modify, relocate, or otherwise dispose of any Machine, Modification, or Addition, in whole or in part, without our prior written consent. We will not consent to the relocation of any Machine, Modification, or Addition out of the United States.

We may assign any of our interests in whole or in part. Even when we assign our rights, we remain fully obligated to you and only your written consent can release us from this obligation. Therefore, any claims you have under this Agreement may be brought only against us, not our assignees.

4.6 General

If any provision of this Agreement becomes invalid or unenforceable, all other provisions remain in effect. Our failure to require full performance or our waiver of any provision in this Agreement does not prevent us from requiring full performance of all provisions in the future.

Notices

All notices under this Agreement will be delivered in person or mailed, to you at your address or to us at the IBM Branch Office shown in the Supplement.

Changes to the Agreement Terms

In order to maintain flexibility in our financial offerings, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new Transactions.

For any other change to be valid, both parties must sign it. Additional or different terms in any written communication from you are void.

Agreement Termination

This Agreement may be terminated by either party with one month's written notice. However, each Transaction existing on the effective date of that termination will survive until all its related obligations are fully satisfied.

Electronic Communications

Electronic communications, if used, are the equivalent of written and signed documents. When both parties agree to use electronic invoicing and payment options, you may authorize us to initiate direct payment from your deposit account for the items listed on any Supplement and for any related taxes.

Conflicting Terms

If there is conflict between terms, those of a Supplement prevail over those of this Agreement for the Transactions listed on the Supplement.

Governing Law

The laws of your State govern this Agreement.