

Attachment for IBM Z Capacity Backup Upgrade

The terms of this Attachment for IBM Z Capacity Backup Upgrade (Attachment) are in addition to the IBM Client Relationship Agreement (CRA) or equivalent agreement in effect between Client and IBM (the Agreement) and govern IBM's provision of, and Client's acquisition and use of, the IBM Z Capacity Backup Upgrade offering. Capitalized terms used and not defined herein have the meanings given them in the Agreement.

1. Overview; General Explanation of Offering

This IBM Z Capacity Backup Upgrade offering provides Client the ability to install temporary replacement capacity, within Client's Agency, in case of lost Production Machine Capacity due to unforeseeable, unplanned events beyond Client's control.

2. Definitions

The following terms are used in this Attachment:

Activate/Activation - is Client's act of converting Inactive Capacity into Active Capacity, by adding additional Capacity utilizing an installed CBU record, up to the maximum Entitlements.

Active Capacity - Capacity that is Entitled and thus temporarily in use on a limited basis described herein.

CBU Machine - is an IBM Z Machine separate from a corresponding Production Machine, on which Inactive Capacity may be Activated, or Active Capacity may be Deactivated.

Capacity - is the amount of computing resources available in a Machine.

Capacity Backup (CBU) - an IBM modification to the Licensed Internal Code (LIC) of a Machine that enables that Machine to perform temporarily as an upgraded CBU Machine.

CBU Feature - feature specifying that the CBU Machine is Entitled to be temporarily upgraded with a CBU, and such CBU Feature shall expire at the end of the term specified in the Transaction Document.

CBU Test - a procedure that Client conducts to test its ability to Activate a CBU for purposes of testing the Emergency Activation process for a CBU Machine.

CBU Test End - the earlier of: i) the date Client completes the CBU Test, or ii) the expiration of 240 consecutive hours following Activation of the CBU.

Deactivate/Deactivation - is the act of converting Active Capacity into Inactive Capacity, thereby terminating all of Client's Entitlement to the Deactivated Capacity.

Emergency - an unforeseeable event or circumstance beyond Client's control that results in an unavoidable loss of substantially all of a Production Machine's Capacity.

Emergency End - the earlier of i) restoration of Lost Capacity or ii) 90 calendar days following Activation of a CBU for purpose of an Emergency.

Entitled/Entitlement - is a permissible usage right acquired from, or otherwise authorized by, IBM (directly or through an authorized IBM Business Partner).

Feature - is a Machine resource or function delivered by IBM through parts, Licensed Internal Code (LIC) or Entitlements to LIC, or any combination of the preceding.

Inactive Capacity - is any Capacity that is not currently Active, or in use on the CBU Machine.

Lost Capacity - the Capacity that Client is authorized to use and i) was lost due to the unforeseeable/unplanned event; and ii) is the basis for Client declaring an Emergency.

Multi-Tenant CBU Machine - a CBU Machine that is entitled for multi-tenant usage. It can be utilized for the provision of services for the entities supported by Client. Multi-Tenant environments require Client (managed service provider (MSP)) to have MSP terms under a separate IBM agreement. The CBU Attachment does not in itself grant MSP status or include MSP terms.

Production Machine - a Machine that runs the Workload of a Single-Tenant.

Single-Tenant/Tenant - a single legal entity that has contracted with IBM, or has contracted with IBM's Client, for the provision of services which includes utilizing the CBU Machine for such legal entity.

Single-Tenant/Tenant CBU Machine - A CBU Machine that solely serves a Single-Tenant.

Workload - Products and programs that execute on a Production Machine in support of a Single-Tenant's business. Examples of Workload include, without limitation, those characterized as "productive", "production", "development", "maintenance" and "test" workloads.

3. CBU - General

- 3.1 IBM Programs.** A CBU Activation that Client deploys in accordance with the terms specified in this Attachment will not increase IBM Program charges, provided Client does not exceed its authorized use of IBM Programs. Should Client exceed its authorized use of the IBM Programs, Client will be responsible for all applicable additional license charges, notwithstanding CBU Test End, Emergency End or Capacity Deactivation, in addition to other remedies associated with software over- deployment that may be available to IBM. A CBU record does not entitle Client to any additional authorizations for use of IBM Programs. IBM may verify compliance with the terms of this Attachment and the Agreement under the terms of the Agreement.

- 3.2 Non-IBM Program Products.** Additional license fees for Non-IBM Program products associated with or resulting from CBU Activation may apply. Client should consult with Client's vendor or licensor of any non-IBM Program products installed on a CBU Machine to understand the structure of these fees and any associated obligations, including the process by which Activations may need to be reported.
- 3.3 Title.** There is no change in existing title or ownership when the CBU is Activated.
- 3.4 Warranty for the CBU** is provided by IBM under the same terms and conditions as the warranty for the corresponding CBU Machine. IBM warranty service is provided for the CBU starting from the time the CBU Feature is initially installed until the expiration of its applicable warranty period, regardless of whether the CBU is Activated.
- 3.5 IBM Maintenance Service.** A CBU Activation that Client deploys in accordance with the terms specified in this Attachment will not change IBM maintenance service charges already agreed to between IBM and Client. During the period that a CBU is Activated, Client will continue to be responsible for all recurring charges for IBM Machine maintenance Service at the rate applicable prior to the CBU being Activated and subject to the terms of each IBM maintenance service agreement.
- 3.6 CBU Charges**
- For CBU ordered through an IBM Business Partner, the Business Partner will establish the charges and terms governing the payment of charges.
 - For CBU ordered through IBM, applicable charges will be specified in the accompanying Transaction Document, which is incorporated herein by reference.
- 3.7 Entitlement; Transfer of Entitlement**
- Client shall not transfer CBU Entitlements from one CBU Machine to another Machine, whether within the Agency or outside the Agency. A CBU Entitlement is granted only to a specific CBU Machine serial number, and only if such CBU Machine is utilized by Client solely to support a Single-Tenant or Multi-Tenants in a single country.
 - Multi-Tenant CBU usage requires authorization by IBM and Supplement signature. Any deviation from this term requires IBM's prior written approval.
 - Client will obtain IBM's prior written agreement before Client exports a CBU Machine to another country outside of the country in which Client originally acquired the CBU Machine.
 - IBM will not accept the return of unused CBU Entitlements, nor shall IBM provide a refund for any unused CBU Entitlements.
- 3.8 Transfer of CBU Machine**
- When a CBU Machine is transferred to another entity, the CBU Entitlement is terminated. Client must remove any CBU Features prior to transfer of the CBU Machine by initiating a removal order with IBM, or an IBM Business Partner, as applicable. Such removal order must be fully completed by IBM while the CBU Machine remains installed at the applicable Client site and prior to transfer of the CBU Machine.
 - If a CBU Machine is upgraded (for example, by conversion to a later Machine model or installation of additional features) within the term, such upgraded CBU Machine remains subject to this Attachment and: 1) CBU Entitlements provided herein for the CBU Machine will not change, and 2) any CBU deployment will temporarily upgrade the CBU Machine either (i) by the same amount of Capacity before such upgrade, but not necessarily the same level of performance (based on performance characteristics of the CBU Machine); or (ii) to the maximum amount of Capacity available on the CBU Machine (based on the CBU Machine's then-current model designation and installed features). Upon Client's request, IBM will provide Client with estimated performance characteristics of an upgraded CBU Machine.
 - CBU Multi-Tenant entitlement is terminated when a CBU Machine is transferred to another entity or when it is upgraded.
 - Client may not assign, or otherwise transfer, this Attachment, in whole or in part, or delegate Client's obligations. Any attempt to such assignment or transfer is void.
 - If Client fails to place an order or grant IBM sufficient access to remove the CBU Feature(s) as specified in Section 3.8 a. above, Client will be invoiced for all charges specified in Section 3.9.d. below as well as any charges subsequently incurred for any use of CBU capacity, even if the CBU Machine is not within Client's possession or control.
- 3.9 IBM Access to CBU Machine; Compliance Verification**
- Client agrees that (1) a CBU record shall be designated to a single CBU Machine with a unique serial number, and (2) a CBU Feature for each CBU Machine shall only be Entitled to Client in a single country. Client must own or be the lessee in possession of each of the CBU Machine and the Production Machine that was previously running the Workload during normal operation. A CBU Machine shall not be used to back up a Production Machine owned by another legal entity. Client shall also provide to IBM the necessary access to both the Production Machine and CBU Machine to monitor usage and, if necessary, remove CBU Features associated with the CBU Entitlement, as further specified in this Section 3.9.
 - Client agrees that CBU and certain CBU Features are limited by technological measures in the LIC of the CBU Machine. Client shall not (i) circumvent such technological measures and/or use a third-party product to circumvent such technological measures, or (ii) otherwise access or use CBU Machine Inactive Capacity that is not authorized

by IBM. If IBM determines that changes are necessary to the technological measures designed to limit Client's access to or use of Inactive Capacity, IBM may provide Client with changes to such technological measures. Client agrees that it shall apply or allow IBM to apply such changes.

- c. Upon reasonable notice to Client, IBM may verify the usage data and other information affecting the calculation of CBU charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Client's business and may be conducted on Client's premises, during Client's normal business hours. Client agrees to provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification. Client agrees that IBM may use an independent auditor to assist with such verification.
- d. If Client's use of the CBU exceeds the IBM authorizations provided pursuant to this Attachment, or if Client fails to comply with any other provision herein, then, in addition to any remedies available to IBM by law or in equity, Client agrees to acquire permanent Capacity and IBM will invoice all charges based on the then current full market price of the permanent Capacity equivalent to the Capacity available with the CBU, without regard to any previously negotiated discounted prices.

3.10 Termination

- a. Client's rights under this Attachment terminate upon the earliest of the following events:
 - i) Client transfers possession or control of the CBU Machine to another party (for example, Client returns the CBU Machine to a lessor);
 - ii) IBM withdraws the Z Capacity Backup Upgrade offering from marketing. IBM reserves the right to withdraw features from marketing, and upon such withdrawal, IBM will no longer accept new CBU FC requests or extend the expiration date of a CBU record. The record will be valid until it expires;
 - iii) Subject to the Contract's Disputes Act, IBM may terminate an order/contract if Client fails to comply with the terms of this Attachment or the Agreement or fails to provide the documentation or data required by IBM to monitor Client's compliance with the terms of this Attachment; or
 - iv) the expiration or termination of Client's rights under this Attachment.
- b. **Upon Termination.** For each event described in 3.10 a. (i), (iii), and (iv) above, Client must remove, or allow IBM to remove, all CBU Features from Client's CBU Machine immediately upon such an event. In the event described in 3.10 a.(ii), then removal or access must be provided on or prior to the effective date of withdrawal from support applicable to such CBU Machine, as such effective date of withdrawal is stated in the IBM announcement for End of Service.

3.11 Client Responsibilities

- a. Client is responsible for acquiring, at Client's expense, adequate memory, drawers, channels, and other system resources necessary to meet the operational requirements for use of a CBU Feature.
- b. Client is responsible to acquire CBU Multi-Tenant authorization prior to multi-Tenant use. **The default CBU mode is Single-Tenant only.**

4. CBU Upgrade – Authorizations

- 4.1 Client is authorized to utilize a CBU Activation solely in the event of an Emergency or for the purpose of a CBU Test, as specified in this Section 4.

a. Emergency Authorization

- 1) In the event of an Emergency, such CBU authorization shall commence on the date the CBU is Activated and shall terminate on the Emergency End.
- 2) During an Emergency, Client is authorized to utilize the Capacity of the CBU only for Workload that was executing prior to the Emergency for the Lost Capacity.

b. CBU Test Authorization

Each CBU Entitlement authorizes Client to conduct a limited number of CBU Tests. One free CBU Test is included in the entitlement for each year long duration of the CBU feature acquired. Upon Client's request, IBM or Client's IBM Business Partner, as applicable, will inform Client of the charges for additional CBU Tests.

- 1) For the purpose of performing a CBU Test, such authorization shall commence on the date the CBU is Activated and shall terminate on the CBU Test End.
- 2) CBU Tests shall not be executed consecutively, meaning that a CBU must be fully Deactivated, the CBU Machine must return to the original Capacity for a minimum of 72 hours before a new CBU Test may be started.
- 3) During a CBU Test, on the Capacity of the CBU Client may:
 - i. execute generic Workloads that are not executed on Client's Production Machine Capacity during normal operation; or
 - ii. execute Workloads from the Production Machine that originally are performed during normal operation. The equivalent Capacity must be disabled on the Production Machine that was previously running the Workload, making this Capacity unusable for the duration of the CBU Test.
- 4) Client shall not perform a CBU Test for any reason, or in any manner, other than as authorized in this Section 4.1(b). The following is a non-exhaustive list of events or circumstances that do not satisfy the criteria for performing a CBU Test:

- i. Data Center maintenance, including program maintenance
- ii. Stress Test
- iii. Development and Test
- iv. System Migration
- v. Application Migration
- vi. Staging Area Allocation
- vii. Planned or Unplanned Spike in Capacity Requirements

4.2 Client will Deactivate a CBU no later than the Emergency End or CBU Test End, as specified in the terms of this Attachment.

5. CBU Multi-Tenant Authorizations

Client may utilize a Multi-Tenant CBU Machine to backup multiple tenants. The Supplement for Capacity Backup Upgrade (i126-9606) is required for each new transaction when acquiring a new CBU record, extending a CBU record, or when adding a Tenant.

5.1 IBM Access to Multi-Tenant CBU Machine; Compliance Verification

If a Multi-Tenant CBU Machine provisions services for more tenants than are listed in the CBU Supplement, Client agrees to acquire permanent Capacity. IBM will invoice all charges based on the then current full market price of the permanent Capacity, equivalent to the capacity required to support the unlisted tenant(s) on the Multi-Tenant CBU Machine, without regard to any previously negotiated discounted prices.

5.2 Multi-Tenant CBU Upgrade – CBU Test Authorizations

Each CBU Entitlement authorizes Client to conduct a limited number of CBU Tests.

- a. One free CBU Test is included in the entitlement for each year long duration of the CBU feature acquired.
- b. Upon Client's request, IBM or Client's IBM Business Partner, as applicable, will inform Client of the charges for additional CBU Tests.

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

Client accepts the terms of IBM's proposal, inclusive of this Attachment by providing a funded Contract / Purchase Order incorporating IBM's proposal by reference. Once accepted, i) any reproduction of this CBU Attachment made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all CBU Upgrades ordered or provided under this Attachment are subject to it.