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CHAPTER 3. SPECIAL ITEM 33411: PURCHASE

TERMS AND CONDITIONS

The terms and conditions of this Chapter are applicable to the purchase of IBM Information Technology equipment offerings. These terms are in addition to the GSA Client Relationship Agreement (CRA) – Machine terms. In the event of conflict, the Attachment prevails over the terms of the CRA.

3.1 ENERGY EFFICIENT PRODUCTS

IBM's products certified as ENERGY STAR ® products or FEMP-designated products are available at the following websites.

<https://www.ibm.com/ibm/environment/products/energystar.shtml>

3.2 ATTACHMENTS - HARDWARE OFFERINGS

3.2.1 ATTACHMENT FOR IBM POWER SYSTEMS TEMPORARY CAPACITY ON DEMAND

The terms of Chapter 1b and this Attachment for IBM Power Systems Temporary Capacity on Demand govern IBM's provision and Government's acquisition and use of the IBM Power Systems On/Off Capacity on Demand offering ("On/Off CoD").

1. Definitions

Activate – to enable On-Demand Capacity for use.

Monitoring Program -- software IBM licenses to Government (for example, the IBM Electronic Service Agent Program) that (i) monitors Activation of Temporary Capacity, and (ii) reports TCoD Units to IBM through a telecommunications connection.

On-Demand Capacity – the amount of resources, such as processors, storage, memory, that is installed on a TCoD Machine but that is not enabled for use (for example, resources which IBM documentation refers to as "on-demand processors").

Requested Units -- TCoD Units Government specifies when Government Activates On-Demand Capacity.

TCoD Billing Feature -- a feature, used for billing purposes, that specifies the price for each TCoD Unit. The TCoD Billing Feature is orderable in the quantity and type of TCoD Units that are Activated during a TCoD Billing Quarter.

TCoD Billing Quarter -- a calendar quarter for which Government's Activation of Temporary Capacity is monitored for billing purposes.

TCoD Enablement Feature -- a feature which, when included in the configuration of a TCoD Machine, (i) authorizes Government to perform Activations and use Temporary Capacity on the TCoD Machine, and (ii) provides a key (referred to in IBM documentation as the "TCoD Enablement Code") to enable Government Activation and Government management of Temporary Capacity on the TCoD Machine.

TCoD Machine -- an IBM Power Systems Machine that supports Temporary Capacity on Demand ("TCoD") (which may also be referred to in IBM literature or otherwise known as "On/Off Capacity on Demand," "On/Off CoD," "On/Off Capacity Upgrade on Demand," or "On/Off CUoD") and for which IBM offers TCoD features. Each TCoD Machine will be specified in an IBM Supplement for IBM Power Systems Temporary Capacity on Demand ("Supplement").

TCoD Unit Maximum -- a TCoD Enablement Feature's maximum number of TCoD Units available for Activation. Once this maximum is reached, Government must obtain a new TCoD Enablement Feature in order to perform additional Activations.

TCoD Units -- the duration and amount of On-Demand Capacity that is Activated. For example, "Processor Days" (number of Activated processors multiplied by the number of 24-hour periods plus any partial 24-hour period), or "Memory Days" (the amount of Activated memory multiplied by the number of 24-hour periods plus any partial 24-hour period) are the TCoD Units measuring Activation of processors and memory, respectively. TCoD Units include both Requested Units and Unreturned Units.

Temporary Capacity -- On-Demand Capacity that has been Activated.

Unreturned Units -- TCoD Units that remain Activated after expiration of the duration Government specified when Government Activated On-Demand Capacity.

2. Use of Temporary Capacity

Government agrees to the following:

- a. Government is responsible for the charges associated with each TCoD Unit measured on Government's TCoD Machine during a TCoD Billing Quarter. This responsibility is satisfied when Government orders a sufficient quantity of TCoD Billing Features and pays IBM for the TCoD Billing Features. The amount due will be at IBM's then-current GSA prices for the TCoD Billing Feature applicable to the associated TCoD Billing Quarter;
- b. To issue a funded delivery order for the amount of the estimated TCoD Units to be used during the Activation period in order to initialize the TCoD Enablement Feature. It is the responsibility of the Government to monitor the funding on the order and to provide additional funding if TCoD Units are required beyond the amount estimated on the original order. Should the Government use TCoD Units beyond the estimated amount and an order is not placed prior to the end of the TCoD Billing Quarter, IBM reserves the right to directly invoice the Government for the actual TCoD Units reported by the Monitoring Program, or as otherwise specified below.

- c. Government will install (unless preinstalled), configure, and maintain the Monitoring Program on each TCoD Machine in the manner specified by IBM in the Monitoring Program's documentation, for the purpose of reporting TCoD Units to IBM at the interval(s) determined solely by IBM;
- d. if Government becomes aware that the Monitoring Program is disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM, Government will promptly notify IBM, and allow IBM to access the TCoD Machine for the sole purpose of determining, if possible, the measurement of TCoD Units for which Government is responsible;
- e. if (a) Government removes, disables, disconnects, or otherwise prevents the Monitoring Program from accurately reporting TCoD Units to IBM; or (b) the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM and Government fails to promptly notify IBM and allow access as described in Section 2.d above, then Government will be responsible for TCoD Units as if all of the associated TCoD Machine's available On-Demand Capacity was Activated during the entire period for which the Monitoring Program did not measure or report TCoD Units to IBM. IBM may exercise its rights to discontinue the Government's use of the TCoD offering, subject to the Contract Disputes Act and FAR 52.233-1 (Disputes); and
- f. upon reasonable notice, during normal business hours, and in a manner that minimizes disruption to Government's business, Government agrees to grant IBM sufficient access to TCoD Machines, including without limitation information regarding the use of IBM Programs on TCoD Machines, for the sole purpose of verifying Government's compliance with the terms of this Attachment and IBM Program license terms.

3. Government's Additional Responsibilities

Government agrees to the following:

- a. Government represents and warrants that, at the time a TCoD Enablement Feature is ordered with, or for, a TCoD Machine, Government is either the owner of the TCoD Machine or Government has the permission from the owner and any lien holders for placing such order and Activating On-Demand Capacity;
- b. IBM is not responsible to notify any of Government's suppliers (for example, other software vendors who license their product on a per-processor basis) when Government Activates On-Demand Capacity;
- c. in addition to charges for Activation of On-Demand Capacity, Government is also responsible for any charges resulting from, or necessary for, the Activation, including those for requisite hardware, software, (for example, software license upgrades) or services (for example, additional maintenance charges);
- d. IBM reserves the right to change the process by which Temporary Capacity is made available for Government's use. Government will install (or if specified by IBM, allow IBM to install) and implement any such change on each applicable TCoD Machine within a commercially reasonable time period following receipt of notice from IBM reserves the right to change the Monitoring Program or the means by which IBM monitors Activation of On-Demand Capacity. Government will install (or if specified by IBM, allow IBM to install) and

implement any such change within a commercially reasonable time period following receipt of notice from IBM;

- e. this offering is comprised solely of the computer resource identified as On-Demand Capacity available for a TCoD Machine. Government is responsible for providing all other computing resources (for example, memory, storage) that Government may require, adequate in type and quantity, to satisfy the needs of Government's computing environment; and
- f. prior to termination of this Attachment for a TCoD Machine, Government will provide IBM access to the TCoD Machine for IBM's removal of the TCoD Enablement Feature. If Government transfers possession of a TCoD Machine without providing IBM such access, Government is, upon such transfer, responsible to IBM for the following charges associated with the transferred TCoD Machine:
 - (1) unreported TCoD Units for Activated On-Demand Capacity, up to the TCoD Unit Maximum; and
 - (2) any Unreturned Units, in excess of the TCoD Unit Maximum.

4. Termination

Government may terminate the rights under this offering for any specific TCoD Machine, by providing written notice to IBM. Such termination is effective the later of i) the date of termination Government specifies in such notice or ii) the date IBM completes the removal of the TCoD Enablement Feature from Government's applicable TCoD Machine(s), such removal to be performed at a mutually agreed upon time.

Government's rights under this Attachment for a TCoD Machine terminate upon the earliest of the following: i) Government transfers possession or control of the TCoD Machine to another party (for example, Government returns the TCoD Machine to a lessor); ii) the Government's purchase order expires. .

IBM may exercise its rights to discontinue this TCoD offering if the Government fails to comply with any of its terms, subject to the Contract Disputes Act and FAR 52,233-1 (Disputes).

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

5. Warranty

IBM hardware warranty terms apply. As such, the warranty period for On-Demand Capacity commences upon the Date of Installation of the On-Demand Capacity, regardless of when or whether Government Activates the On-Demand Capacity.

6. Machine Code

Government's use of Machine Code on a TCoD Machine is subject to the terms and restrictions governing such use as specified in the Agreement. Government's use of Temporary Capacity is governed by the terms and restrictions that govern Machine Code except as expressly provided in this Attachment. Machine Code does not include any Program or code provided under a separate license agreement, including without limitation an open source license agreement.

6.1 Built-in-Capacity

A TCoD Machine includes computing resources or capabilities that are to remain inactive, or the use of which is restricted, until the right to access and use the resources or capabilities is properly acquired directly from IBM or through an authorized IBM reseller (called “Built-in-Capacity”). Such computing resources and capabilities include without limitation processors, memory, storage, and/or workload specific resources or capabilities (such as limitations on the use for a specific operating system, programming language or application). If Government is the rightful possessor of a TCoD Machine, IBM grants Government a license to use the Machine Code (or any replacement IBM provides) on, or in conjunction with, only the TCoD Machine for which the Machine Code is provided, and only to the extent of authorizations Government has acquired for access to and use of Built-in-Capacity. If Government’s use of Built-in-Capacity exceeds such IBM authorizations, Government agrees IBM will invoice the Government for charges based on the full price of permanent, unrestricted use of the Built-in-Capacity at the then-current GSA price.

6.2 Temporary License

For the purpose of an Activation, IBM grants Government a temporary license to use the Machine Code on the TCoD Machine to support Government’s use of Temporary Capacity, as authorized herein. Government’s temporary license to use the Machine Code on a TCoD Machine will commence on the date Government performs the Activation and will terminate upon the earlier of the following: i) Government’s Deactivation of the Temporary Capacity, and ii) expiration or termination of Government’s rights under this Attachment for the TCoD Machine.

6.3 Circumvention of Technological Measures

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

This Attachment, including its Supplements, and Chapter 1 and Chapter 3 are the complete agreement regarding IBM’s provision of On/Off CoD, and replace any prior oral or written communications between Government Customer and IBM. By issuing IBM an order for this offering, neither party is relying on any representation that is not specified in this Attachment including without limitation any representations concerning: i) performance or function of On/Off CoD; ii) the experiences or recommendations of other parties; or iii) results or savings Government Customer may achieve. Additional or different terms regarding this On/Off CoD offering identified in a Government Delivery Order, unless provided in an IBM proposal or quote, are void.

3.2.2 ATTACHMENT SYSTEM Z CAPACITY ON DEMAND OFFERINGS

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

The terms stated herein for IBM System z Capacity on Demand Offerings (“CoD Attachment”) govern IBM’s provision and Customer’s acquisition and use of IBM System z Capacity on Demand Offerings. When used in the terms below, “Customer” means the Government Customer.

1. Associated Attachments

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

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

2. Definitions

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

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

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

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

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

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

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

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

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

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

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

3. Charges

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

4. General Offering Terms

- a. Customer represents and warrants that Customer is the owner of the Eligible Machine for which Customer orders an Upgrade or that Customer has the permission of the owner and any lien holders of the Eligible Machine to install an Upgrade.
- b. An Upgrade consists solely of a modification to an Eligible Machine’s LIC. Accordingly, no title to an Upgrade is transferred.
- c. IBM will make available to Customer commercially reasonable instructions to properly Activate and Deactivate an Upgrade. Customer agrees to follow such instructions.
- d. Program or service charges may increase for an Eligible Machine as the result of installation of an Upgrade.

- e. If an Eligible Machine is upgraded (for example, conversion to a higher model or installation of additional features: 1) entitlements provided herein for the Eligible Machine will not change and 2) any Upgrade request will upgrade the Eligible Machine either (i) by the same amount of Capacity, but not necessarily the same amount of additional performance (based on performance characteristics of the Eligible Machine); or (ii) to the maximum amount of Capacity available on the Eligible Machine (based on the Eligible Machine's then-current model designation and installed Features), whichever is less. Upon Customer's request, IBM will provide Customer with estimated performance characteristics of an Eligible Machine.
- f. Customer is responsible for maintaining each Eligible Machine in an operational condition sufficient for implementation and use of an Upgrade. If Customer does not maintain such an operational condition of an Eligible Machine, Customer may not be able to Activate or use an Upgrade until such condition is restored.
- g. IBM may make commercially reasonable updates to the procedure by which an Upgrade is ordered, installed, Activated, or Deactivated. Customer agrees to install and implement such update within a commercially reasonable period of time following IBM's notice to Customer of such update, provided IBM generally requires its customers to implement the same procedure update.
- h. The Customer may not transfer the Machine that is subject to this CoD offering or delegate the Customer's obligations under the terms of this offering without the prior written consent of IBM. Any attempt to such assignment or transfer without such consent is void. IBM will not unreasonably withhold such consent.

5. Licensed Internal Code

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

5.1 Built-in-Capacity

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

5.2 Circumvention of Technological Measures

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

or use of, Built-in-Capacity, IBM may provide Customer with changes to such technological measures. Customer agrees, at IBM's option, to apply or allow IBM to apply such changes.

6. Term and Termination

6.1 Term

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

6.2 Termination

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

Customer may terminate this CoD offering, or terminate Customer's rights under this CoD offering for any specific Eligible Machine, upon one month's prior written notice in accordance with the terms of the Agreement. Such notice must be provided to IBM if an Eligible Machine is removed seeks to transfer possession as stated above.

IBM may exercise its rights to discontinue the Customer's CoD offering upon written notice if the Customer fails to comply with any of its terms, subject to the Contract Disputes Act and FAR 52.233-1 (Disputes). .

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

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

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

3.2.2.1 Attachment System z On/Off Capacity on Demand (CoD)

The terms of this Attachment for IBM System z On/Off Capacity on Demand (On/Off CoD Attachment) are in addition to i) the IBM Client Relationship Agreement (CRA) ii) the IBM Attachment for IBM System z Capacity on Demand Offerings identified below (CoD Attachment), iii) the IBM Attachment for IBM System z On-Line CoD Buying identified below (On-Line CoD Buying Attachment) and govern IBM's provision and Client's acquisition and use of On/Off Capacity on Demand (On/Off CoD) Upgrades through the CIU Facility.

1. Associated Attachments

This On/Off CoD Attachment, in addition to the On-Line CoD Buying Attachment and the CoD Attachment provide terms that apply to the IBM System z On/Off Capacity on Demand (OOCoD) offerings. This OOCoD Attachment is an “Associated Attachment” to the CoD Attachment. If there is a conflict among the terms of this OOCoD Attachment and the On-Line CoD Buying Attachment or the CoD Attachment, those of this OOCoD Attachment prevail over the On-Line CoD Buying Attachment and the CoD Attachment.

2. Definitions

Capitalized terms not defined in this OOCoD Attachment or in the Agreement have the meaning ascribed to them in the CoD Attachment or the On-Line CoD Buying Attachment, as applicable.

Millions of Service Units (MSUs) -- an Eligible Machine’s units of workload capacity, as determined solely by IBM and as published by IBM at <http://www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo/>

OOCoD Capability Feature – a Capability Feature specifying that an On-Line Eligible Machine is authorized for OOCoD Upgrades.

OOCoD Eligible Machine -- an On-Line Eligible Machine for which Client has acquired and installed an OOCoD Capability Feature.

OOCoD Software Charge – the Program usage charge, applicable as announced by IBM for selected IBM Programs running on an OOCoD Eligible Machine, that results from the use of an OOCoD Upgrade on that OOCoD Eligible Machine.

OOCoD Upgrade – an Upgrade for which IBM has authorized Client’s limited use of LIC to enable the activation of applicable Capacity for a specific OOCoD Eligible Machine on a temporary basis.

Reporting Period -- the period of time which begins on the second calendar day of each calendar month and ends on the first calendar day of the following calendar month.

Vital Product Data (VPD) -- an OOCoD Eligible Machine’s configuration data which is stored on and automatically managed by the OOCoD Eligible Machine.

3. Temporary LIC License

Client’s temporary license to use LIC on an OOCoD Eligible Machine will commence on the date Client Activates an OOCoD Upgrade and will terminate upon the later of the following: i) the date Client Deactivates the OOCoD Upgrade or ii) termination of this OOCoD Attachment for the OOCoD Eligible Machine.

4. General Terms

Client agrees as follows:

a. Client will order an OOCoD Upgrade only for an On/Off Eligible Machine, and will place such request only through the CIU Facility;

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- b. For each OOCoD Eligible Machine, Client will transmit the OOCoD Eligible Machine's VPD to IBM, using RSF, no less frequently than once within a fourteen calendar-day period;
- c. Prior to expiration or termination of this OOCoD Attachment for an OOCoD Eligible Machine, Client will: (1) place an order with IBM or Client's IBM Business Partner, as applicable, for removal of the OOCoD Capability Feature from the OOCoD Eligible Machine. When ordered from IBM, such removal shall be provided for no charge. When ordered from Client's IBM Business Partner, the Business Partner will establish the removal charge and terms governing payment of the charge; and (2) following the placement of such order, promptly grant IBM sufficient access to the OOCoD Eligible Machine for IBM to remove the OOCoD Capability Feature. Such access will be at a time mutually agreed upon by Client and IBM but shall not be later than the date this OOCoD Attachment expires or terminates for the OOCoD Eligible Machine.

If Client fails to place such an order or grant IBM sufficient access to remove the OOCoD Capability Feature, Client will be obligated for all charges subsequently incurred for any additional OOCoD Upgrade Activated for that OOCoD Eligible Machine even if the OOCoD Eligible Machine is not within Client's possession or control; and

- d. Client may not assign, or otherwise transfer, this OOCoD Attachment, in whole or in part, or delegate Client's obligations. Any attempt to make such assignment or transfer is void.

5. OOCoD Upgrade Charges

The daily usage charge for an OOCoD Upgrade is based on the configuration of the OOCoD Upgrade when Activated on an OOCoD Eligible Machine, regardless of the extent to which Client is able to utilize the OOCoD Upgrade, and is specified by the CIU Facility for the OOCoD Upgrade.

The applicable daily usage charge is based on the largest OOCoD Upgrade Activated during a contiguous 24-hour period or partial 24-hour period. In addition, usage charges apply until such time as the OOCoD Upgrade is Deactivated.

The configuration, time of Activation, and time of Deactivation of an OOCoD Upgrade is determined by the OOCoD Eligible Machine, and reported to IBM by VPD that Client transmits to IBM.

6. OOCoD Software Charges

6.1 General OOCoD Software Terms

- a. Only IBM Programs licensed under and subject to the terms of the IBM International Program License Agreement (IPLA) are eligible for OOCoD Software Charges.

- b. For an IBM Program to be eligible for OOCoD Software Charges on an OOCoD Eligible Machine, Client must have IBM's authorization for use of the Program on the OOCoD Eligible Machine acquired with a one-time charge for the applicable license.

- c. OOCoD Software Charges associated with Activation of an OOCoD Upgrade apply to all IBM Programs eligible for OOCoD Software Charges licensed to the OOCoD Eligible Machine on which an OOCoD Upgrade is Activated and are determined by i) the configuration of the OOCoD Upgrade and ii) the contiguous period of time the OOCoD Upgrade is Activated on the OOCoD Eligible Machine, regardless of the extent to which the OOCoD Upgrade is used. OOCoD Software Charges apply until the associated OOCoD Upgrade is Deactivated.

- d. The OOCOD Software Charge unit is either a i) MSU Day for IBM Programs (one contiguous 24-hour period, or any partial 24-hour period, multiplied by the quantity of MSUs activated through the Capacity of an OOCOD Upgrade), which IBM specifies as being priced on “value units” or ii) Processor Day for IBM Programs (defined as one contiguous 24-hour period, or any partial 24-hour period, multiplied by the quantity of CPs activated through the Capacity of an OOCOD Upgrade) , which IBM specifies as being priced on a quantity of processors.
- e. OOCOD Software Charges are based on the OOCOD Eligible Machine’s VPD that Client transmits to IBM.
- f. If Client acquires Programs for which OOCOD Software Charges apply from Client’s IBM Business Partner, Client’s IBM Business Partner establishes the charges and the terms governing payment of the charges.
- g. OOCOD Software Charges will not accrue toward a one-time charge for a Program license.
- h. Program authorizations acquired under one-time charges but not yet placed into use may be applied, at Client’s direction, to meet OOCOD Software Charges.
- i. If an OOCOD Upgrade is replaced on the same OOCOD Eligible Machine by a Permanent Upgrade during the Reporting Period in which the OOCOD Upgrade was installed, there will be no OOCOD Software Charge associated with that OOCOD Upgrade during the Reporting Period.
- j. Installation of an OOCOD Upgrade will not result in increased IBM Software Maintenance (“SWMA”) charges for Programs to which OOCOD Software Charges apply.
- k. OOCOD Software Charges are not reduced by other discount offerings including volume pricing discounts, aggregated charges, no-charge complementary or trial offerings that provide no-charge OOCOD Upgrades, other than “education allowance” when such discount is specified by IBM in the IBM Program’s announcement letter as being applicable to that IBM Program.
- l. During the term of this Attachment and for a period of six months thereafter, IBM may verify Client’s compliance with the terms for OOCOD Software Charges by conducting one or more compliance reviews. IBM will provide Client with prior notice and will conduct the review on Client’s premises, during Client’s normal business hours, in a manner that minimizes disruption to Client’s business. IBM may require access to an OOCOD Eligible Machine, copies of system tools outputs, or other electronic or hard copy system information, as appropriate. Client agrees to provide such access and information sufficient for IBM to conduct a compliance review.

6.2 Client Responsibilities Regarding OOCOD Software Charges

Client agrees as follows:

- a. when Client acquires an OOCOD Capacity Capability Feature, Client will provide IBM or Client’s IBM Business Partners, as applicable, an accurate inventory of Programs licensed to Client under the IPLA Program), by Program number (for example, 5655-E61), for the OOCOD Eligible Machine for which the OOCOD Capacity Capability Feature is installed;
- b. Client will notify IBM or Client’s IBM Business Partners, as applicable, within five business

days if Client makes a change to the inventory of IPLA Programs on an OOCoD Eligible Machine;

c. Client will notify IBM of Client's selections and the affected IPLA Program numbers and descriptions, by sending an e-mail to the ID provided at <http://www.ibm.com/zseries/library/swpriceinfo> if Client chooses to have OOCoD Software Charges billed to Client by an IBM Business Partners;

d. if Client has instructed IBM or Client's IBM Business Partner that it is to accept an order from Client only if that order is accompanied by Client's signed purchase order, Client hereby authorizes IBM or Client's IBM Business Partner, as applicable, to invoice Client for increased charges for IBM Programs, as specified herein, when an OOCoD Upgrade is Activated on an OOCoD Eligible Machine in lieu of Client's signed purchase order, and that IBM or Client's IBM Business Partner, as applicable, will consider Client's such actions to be a valid Program order placed by Client for all IBM Programs licensed to or running on the OOCoD Eligible Machine as if Client had provided a signed purchase order; and e. Client will place an order with IBM or Client's IBM Business Partner, as applicable, for the required OOCoD Software Charge features if Client executes a Program for which charges are calculated on a per-processor basis on an OOCoD Eligible Machine on which an OOCoD Upgrade is Activated.

6.3 IBM Programs Not Eligible for OOCoD Software Charges

Activation of an OOCoD Upgrade will have the following effect on IBM Programs not eligible for OOCoD Software Charges:

- a. a one-time charge is increased, based on the size (measured in MSUs) of the OOCoD Upgrade;
- b. if full capacity of the OOCoD Eligible Machine is used to determine a recurring charge for an IBM Program, the recurring charge is increased based on the size (measured in MSUs) of the OOCoD Upgrade for the full Reporting Period during which the OOCoD Upgrade was Activated.
- c. if sub-capacity pricing is in effect for the Eligible Machine, an increase in recurring sub-capacity charges will apply only if usage of the applicable Program increases during the Reporting Period.

7. OOCoD Upgrade Capability Tests

Client is authorized to execute one OOCoD Upgrade on each OOCoD Eligible Machine for the sole purpose of testing the OOCoD Upgrade capability of that OOCoD Eligible Machine (Capability Test), subject to the following conditions:

- a. Client properly indicates through the CIU Facility that an OOCoD Upgrade request will be used to conduct a Capability Test; and
- b. the Capability Test does not exceed one contiguous period of 24 hours in duration, as measured from the time the OOCoD Upgrade is activated on the Eligible Machine until the time the OOCoD Upgrade is deactivated from the Eligible Machine.

Provided the above conditions are met, IBM will waive any IBM charges that result from the Capability Test. If the above conditions are not met, i) the OOCoD Upgrade will be subject to the terms of the OOCoD Upgrade Charges section and the OOCoD Software Charges section, including without limitation Client's obligation for applicable OOCoD Upgrade usage charges and OOCoD Software charges for the entire period the OOCoD Upgrade is Activated, and ii) IBM will restore Client's authorization for one Capability Test for that Eligible Machine.

If, during a Capability Test, i) an OOCoD Upgrade is not available for download to the OOCoD

Eligible Machine within three hours from the time Client requests the OOCoD Upgrade through the CIU Facility or ii) the Deactivation of the OOCoD Upgrade causes an unexpected interruption of the operation of the OOCoD Eligible Machine, IBM will restore Client's authorization for one Capability Test for the OOCoD Eligible Machine provided i) Client follows IBM's documented procedures to notify IBM, using the CIU Facility, that the Capability Test was not successful; ii) IBM accepts such notification as being a valid cause for restoration; and iii) Client provides IBM commercially reasonable details of the problem that Client encountered provided such details are requested by IBM.

8. Term and Termination

8.1 Term

The term of this OOCoD Attachment begins once the Client accepts the OOCoD Attachment and ends upon termination as specified in Section 8.2 below.

8.2 Termination

Client may terminate this OOCoD Attachment, or terminate Client's rights under this OOCoD Attachment for any specific OOCoD Eligible Machine, by providing one month's prior written notice to IBM. Such a termination is effective the later of i) the date of termination Client specifies in such notice or ii) the date IBM completes the removal of the OOCoD Capability Feature from the OOCoD Eligible Machine.

Client's rights under this OOCoD Attachment for an OOCoD Eligible Machine terminate upon the earliest of the following events: i) Client transfers possession or control of the OOCoD Eligible Machine to a third party (for example, Client returns the OOCoD Eligible Machine to a leasing company at lease-end); ii) IBM withdraws from marketing of any Machine type, model or feature required to implement OOCoD Upgrades for the OOCoD Eligible Machine; iii) IBM withdraws eligibility for Service for Machines for the OOCoD Eligible Machine; iv) the On-Line CoD Buying Attachment terminates; or v) this OOCoD Attachment terminates.

IBM may exercise its rights to discontinue the Customer's OOCoD offering upon written notice if the Customer fails to comply with any of its terms, subject to the Contract Disputes Act and FAR 52.233-1 (Disputes), provided written notice and reasonable time, not to exceed 30 days, is given to comply.

This On/Off CoD Attachment, the CoD Attachment, the On-Line CoD Buying Attachment and its Supplements, and the Agreement comprise the complete agreement regarding the IBM System z On/Off Capacity on Demand offering and replace any prior oral or written communications between Customer and IBM. In entering into this On/Off CoD Attachment, neither party is relying on any representation that is not specified in the On/Off CoD 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. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

3.2.3 ATTACHMENT SYSTEM Z REPLACEMENT CAPACITY OFFERINGS

The terms of this Attachment for IBM System z Replacement Capacity Offerings (“RC Attachment”) are in addition to i) the Attachment for IBM System z Capacity on Demand Offerings in effect between Customer and IBM and identified above (“CoD Attachment”) and govern IBM’s provision and Customer’s acquisition and use of an IBM System z Replacement Capacity Offering. When used in this Attachment, “Customer” means the Government Customer that is acquiring the IBM System z Capacity on Demand Offering, subject to the Agreement.

Associated Attachments

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

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

Definitions

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

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

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

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

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

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

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

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

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

Temporary LIC License

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

IBM Program and Machine Maintenance Service Charges

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

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

Term and Termination

Term

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

Termination

This RC Attachment terminates for a specific RC Eligible Machine when the Customer removes or otherwise transfers possession of the RC Eligible Machine, or any part of the RC Eligible Machine containing On-Demand Capacity.

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

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

IBM may exercise its rights to discontinue this offering upon written notice if the Customer fails to comply with any of the terms and conditions of this RC Attachment, subject to the Contract Disputes Act and FAR 52.233-1 (Disputes). Upon termination of this RC Attachment, all RC Associated Attachments, and all rights for RC Eligible Machines under the RC Associated Attachments, terminate.

Customer's Responsibilities

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

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

Additional or different terms regarding this offering identified in a Government Delivery Order, unless provided in an IBM proposal or quote, are void.

Attachment for IBM System z On/Off Capacity on Demand

The terms of this Attachment for IBM System z On/Off Capacity on Demand (On/Off CoD Attachment) are in addition to i) the IBM Client Relationship Agreement (CRA), or an equivalent agreement in effect between the parties identified below (the Agreement), ii) the IBM Attachment for IBM System z Capacity on Demand Offerings identified below (CoD Attachment), iii) the IBM Attachment for IBM System z On-Line CoD Buying identified below (On-Line CoD Buying Attachment) and govern IBM's provision and Client's acquisition and use of On/Off Capacity on Demand (On/Off CoD) Upgrades through the CIU Facility.

1. Associated Attachments

This On/Off CoD Attachment, the On-Line CoD Buying Attachment and the CoD Attachment provide terms that apply to the IBM System z On/Off Capacity on Demand (OOCOD) offerings. This OOCOD Attachment is an "Associated Attachment" to the CoD Attachment. If there is a conflict among the terms of this OOCOD Attachment and the On-Line CoD Buying Attachment or the CoD Attachment, those of this OOCOD Attachment prevail over the On-Line CoD Buying Attachment and the CoD Attachment.

2. Definitions

Capitalized terms not defined in this OOCOD Attachment or in the Agreement have the

meaning ascribed to them in the CoD Attachment or the On-Line CoD Buying Attachment, as applicable.

Millions of Service Units (MSUs) -- an Eligible Machine's units of workload capacity, as determined solely by IBM and as published by IBM at <http://www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo/>

OOCoD Capability Feature -- a Capability Feature specifying that an On-Line Eligible Machine is authorized for OOCOD Upgrades.

OOCoD Eligible Machine -- an On-Line Eligible Machine for which Client has acquired and installed an OOCOD Capability Feature.

OOCoD Software Charge -- the Program usage charge, applicable as announced by IBM for selected IBM Programs running on an OOCOD Eligible Machine, that results from the use of an OOCOD Upgrade on that OOCOD Eligible Machine.

OOCoD Upgrade -- an Upgrade for which IBM has authorized Client's limited use of LIC to enable the activation of applicable Capacity for a specific OOCOD Eligible Machine on a temporary basis.

Reporting Period -- the period of time which begins on the second calendar day of each calendar month and ends on the first calendar day of the following calendar month.

Vital Product Data (VPD) -- an OOCOD Eligible Machine's configuration data which is stored on and automatically managed by the OOCOD Eligible Machine.

3. Temporary LIC License

Client's temporary license to use LIC on an ^{Rev 09/08} On-Line Eligible Machine will commence on the ³⁻²⁴ date Client Activates an OOCOD Upgrade and will terminate upon the later of the following: i) the date Client Deactivates the OOCOD Upgrade or ii) termination of this OOCOD Attachment for the OOCOD Eligible Machine.

3.2.4 ATTACHMENT SYSTEM z ON-LINE CoD BUYING

Attachment for IBM System z On-Line CoD Buying

The terms of this Attachment for IBM System z On-Line CoD Buying (“On-Line CoD Buying Attachment”) are in addition to i) the IBM Customer Relationship Agreement Machines (or an equivalent agreement in effect between us) identified below (“Agreement”) and ii) the IBM Client Agreement Attachment for IBM System z Capacity on Demand Offerings identified below (“CoD Attachment”) and govern IBM’s provision and Customer’s acquisition of Capacity on Demand Offering Features through the Customer Initiated Upgrade (“CIU”) Facility.

1. Associated Attachments

This On-Line CoD Buying Attachment and the CoD Attachment provide terms that apply in general to the on-line acquisition of an Upgrade for IBM System z Capacity on Demand Offerings. This On-Line CoD Buying Attachment is an “Associated Attachment” to the CoD Attachment. Additional terms as set forth in separate Associated Attachments govern each specific Capacity on Demand Offering.

If there is a conflict among the terms of this On-Line CoD Buying Attachment and an Associated Attachment, the terms of the Associated Attachment prevail over those of this On-Line CoD Buying Attachment.

2. Definitions

Capitalized terms not defined in this On-Line CoD Buying Attachment or in the Agreement have the meaning ascribed to them in the CoD Attachment.

CIU Express -- an on-line buying option that enables rapid delivery of an Upgrade through the CIU Facility.

CIU Facility – the aggregation of IBM application(s), IBM web site(s), personnel and business processes which support and are necessary for execution of a Capacity on Demand Offering.

CIU Order Acceptance Period – 14 calendar days following Customer’s placement of an order for an Upgrade through the CIU Facility.

On-Line CoD Buying Capability Feature – a Capability Feature specifying that Customer may place orders for that Eligible Machine through the CIU Facility.

On-Line Eligible Machine – an Eligible Machine for which Customer has acquired and installed an On-Line CoD Buying Capability Feature.

Permanent Upgrade – an Upgrade for which IBM has authorized Customer’s limited use of LIC to enable the Activation of additional Capacity for a specific Permanent Upgrade Eligible Machine on a permanent basis.

Permanent Upgrade Capability Feature – a Capability Feature specifying that Customer may place orders for Permanent Upgrades through the CIU Facility.

Permanent Upgrade Eligible Machine – an On-Line Eligible Machine for which Customer has acquired and installed a Permanent Upgrade Capability Feature.

Primary CIU ID – a unique identification code established by Customer and registered with IBM’s “Resource Link” web site for Customer’s use with a Capacity on Demand Offering(s). Primary CIU IDs are either specified on a Supplement for On-Line CoD Buying (“Supplement”) or enabled by Customer through the CIU Facility.

Secondary CIU ID -- a unique identification code established by Customer and registered with IBM’s

“Resource Link” web site for use with a Capacity on Demand Offering(s). Secondary CIU IDs are either specified on a Supplement or enabled by Customer through the CIU Facility.

3. General Terms

Customer agrees as follows:

- a. Using a Primary CIU ID, Customer may place an Upgrade order through the CIU Facility, as specified in an Associated Attachment applicable to the type of Upgrade ordered, only for an On- Line Eligible Machine;
- b. If a Secondary CIU ID is required as specified in Section 3.f.2.a below or requested by Customer for an On-Line Eligible Machine, Customer will use a Secondary CIU ID to approve for acquisition an Upgrade order placed by a Primary CIU ID;
- c. IBM, at its sole discretion, will specify through the CIU Facility Upgrades available for Activation on an On-Line Eligible Machine;
- d. Customer will install and utilize the IBM Remote Support Facility (“RSF”) link for each On-Line Eligible Machine for the purpose of downloading an ordered Upgrade;
- e. The CIU Facility will notify Customer when an Upgrade ordered by a Primary CIU ID and, if applicable approved by a Secondary ID, is available for Customer to download the Upgrade to the On-Line Eligible Machine. Unless otherwise specified by the CIU Facility, each Upgrade ordered through the CIU Facility will expire on the earlier of i) a date Customer specifies in the Upgrade’s order, or ii) 180 calendar days following the date the Upgrade is ordered. Such date of expiration for an Upgrade will be referred to as the “Replenishment Due Date” by the CIU Facility. Upon Customer’s receipt of such notice, Customer may download the Upgrade to the On-Line Eligible Machine at any time prior to such expiration date;
- f. When Customer downloads an Upgrade to an On-Line Eligible Machine through the CIU Facility:
 - (1) IBM considers such Upgrade placed by Customer to be a valid upgrade order in accordance with the agreed to Contract or Purchase Order governing the On-Line COD purchase placed by Customer; and
 - (2) one of the following applies:
 - (a) for an Upgrade acquired from IBM: for the purpose of this On-Line CoD Buying Attachment, the charge for the Upgrade is in accordance with the price agreed to within Contract/Purchase Order. Customer will be invoiced for the charges that apply to the Upgrade, subject to IBM’s acceptance of Customer’s upgrade order as described in the applicable Associated Attachment, at the applicable price agreed to within the Contract/Purchase Order unless, if Customer is not the owner of the On-Line Eligible Machine, Customer and the owner have executed a Supplement in which the owner, referred to in such Supplement as the “Financing Enterprise”, has accepted such obligation. Customer will use a Secondary CIU ID to notify IBM that such order is approved by Customer for acquisition. In such case, Customer agrees that i) Customer will provide this approval only when Customer has authorized a valid purchase order, free of any contingencies, for the associated Upgrade order, ii) Customer will provide the associated purchase order number to the CIU Facility, and iii) Customer will assign each Secondary CIU ID to either:
 - (1) an individual who is authorized to appropriate or encumber funds for purchase orders on behalf of Customer for the amount of the Upgrade ordered through the CIU

- Facility or
 - (2) such individual's delegate; or
 - (b) an Upgrade acquired from an IBM Business Partner: Customer's IBM Business Partner will establish the charges and terms governing payment of the charges;
- g. Prior to expiration or termination of the Contract / Purchase Order for On-Line CoD Buying for an On-Line Eligible Machine, Customer will:
 - (1) place an order with IBM or Customer's IBM Business Partner, as applicable, for removal of the On-Line CoD Buying Capability Feature from the On-Line Eligible Machine. When ordered from IBM, such removal shall be provided for no charge. When ordered from Customer's IBM Business Partner, the Business Partner will establish the removal charge and terms governing payment of the charge; and
 - (2) following the placement of such order, promptly grant IBM sufficient access to the On-Line Eligible Machine for IBM to remove the On-Line CoD Buying Capability Feature. Such access will be at a time mutually agreed upon by Customer and IBM but shall not be later than the date the Contract / Purchase Order expires or terminates for the On-Line Eligible Machine;
- h. IBM does not warrant uninterrupted availability of the CIU Facility or the amount of time in which the CIU Facility will process and make available for Customer to download an Upgrade;
- i. When Customer downloads an Upgrade to an On-Line Eligible Machine through the CIU Facility, the Upgrade will be stored on the On-Line Eligible Machine and, depending on the nature of the Upgrade, will either i) self-install and self-Activate upon download or ii) self-install and self-Activate at a time determined by Customer;
- j. Customer is responsible for the use, maintenance and security of all Primary CIU IDs and Secondary CIU IDs; and
- k. Customer may not assign, or otherwise transfer this Agreement, in whole or in part, or delegate Customer's obligations without the prior written consent of IBM. Any attempt to such assignment or transfer without such consent is void. IBM will not unreasonably withhold such consent.

4. Permanent Upgrades

A Permanent Upgrade may be ordered through the CIU Facility only for a Permanent Upgrade Eligible Machine.

For a Permanent Upgrade ordered by Customer, the following terms apply in addition to the terms of the General Terms section above:

- a. If the Permanent Upgrade is ordered without the CIU Express option, as specified in the CIU Express section below, IBM will confirm IBM's or Customer's IBM Business Partner's, as applicable, acceptance of the order by making the Permanent Upgrade's LIC available for Customer to download to the Eligible Machine.
- b. The Permanent Upgrade's Date of Installation is the business day following the date the Permanent Upgrade's LIC is downloaded, regardless of the date the Permanent Upgrade is Activated.

5. CIU Express

Each On-Line Eligible Machine is enabled for placement of orders with CIU Express unless, and applicable only for a Permanent Upgrade order, Customer indicates through the CIU Facility that CIU Express should be suspended for such order.

If Customer orders i) a Permanent Upgrade without suspending CIU Express or ii) any other type of Upgrade for the associated On-Line Eligible Machine, the following terms also apply:

- a. upon download and installation of such Upgrade's LIC, IBM grants Customer a temporary authorization to use the On-Line Eligible Machine's LIC for Activation of such Upgrade until the order is either accepted or rejected by IBM or Customer's IBM Business Partner, as applicable. Customer may use such Upgrade only on the On-Line Eligible Machine for which such LIC is provided, and only to the extent of the authorization IBM has provided through the CIU Facility. Such temporary license does not constitute acceptance of Customer's order by IBM or, if applicable, Customer's IBM Business Partner. Acceptance of Customer's order is at the sole discretion of IBM or, if applicable, Customer's IBM Business Partner;
- b. IBM or Customer's IBM Business Partner, as applicable, accepts Customer's order the earlier of i) the date of IBM's invoice to Customer, if applicable, or ii) expiration of the CIU Order Acceptance Period, unless IBM or, if applicable, Customer's IBM Business Partner, notifies Customer in writing within the CIU Order Acceptance Period that Customer's order is not accepted. If Customer receives such notification of nonacceptance:
 - (1) within seven calendar days of receipt of such notice, Customer will grant IBM access to the On-Line Eligible Machine on which the Upgrade is Activated, sufficient for IBM to restore such On-Line Eligible Machine to its prior configuration;
 - (2) IBM will promptly suspend CIU Express for all of Customer's On-Line Eligible Machines; and,
 - (3) the temporary authorization granted by IBM for the LIC for Activation of the Upgrade is concurrently terminated;
- c. notwithstanding the terms of Section 3.f(2) above, Customer will be invoiced for charges that apply for the Upgrade once IBM or, if applicable, Customer's IBM Business Partner, accepts Customer's order, retroactive to the point in time when the Upgrade was Activated on the On-Line Eligible Machine; and,
- d. Customer may not transfer the On-Line Eligible Machine on which the Upgrade is Activated during the CIU Order Acceptance Period.

IBM may, in its sole discretion, revoke CIU Express for an On-Line Eligible Machine upon written notice to Customer.

It is IBM's intention that orders placed with CIU Express be available for download within three hours of the time the order was completed through the CIU Facility, including without limitation IBM's receipt of all necessary Customer and if applicable, Customer's IBM Business Partner and Eligible Machine's third-party owner, approvals. IBM does not warrant that an order placed with CIU Express will be available within such intended time period.

6. Term and Termination

6.1 Term

The term of this On-Line CoD Buying Attachment begins once a Contract / Purchase Order is accepted by both parties and ends upon termination as specified in Section 6.2 below.

6.2 Termination

Customer may terminate On-Line CoD Buying, or terminate Customer's rights under this On-Line CoD Buying Attachment for an On-Line Eligible Machine, by providing one month's prior written notice to IBM. Such a termination is effective the later of i) the date of termination Customer specifies in such notice, or ii) the date IBM completes the removal of the On-Line CoD Buying Capability Feature from the On-Line Eligible Machine.

Customer's rights under this On-Line CoD Buying Attachment for an On-Line Eligible Machine terminate upon the earliest of the following events: i) Customer transfers possession or control of the On-Line Eligible Machine to a third party (for example, Customer returns the On-Line Eligible Machine to the leasing company at lease-end); ii) IBM withdraws eligibility for Service for Machines for the On-Line Eligible Machine; iii) the Contract / Purchase Order for On-Line Buying CoD expires. In accordance with the Contract's Disputes Act, IBM may terminate this On-Line CoD Buying Attachment if Client does not comply with any of its terms, provided written notice and reasonable time is given to comply, not to exceed 30 days.

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

Client accepts the terms of this On-Line CoD Buying Attachment by incorporating this Attachment by reference in a Contract / Purchase Order. All Upgrades ordered or provided under this On-Line CoD Buying Attachment are subject to it.