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Note: Passport Advantage Terms and Conditions previously in 5.15.13 now located in Appendix S.

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

TERMS AND CONDITIONS

Note: These terms and conditions are applicable to the licensing of IBM licensed programs, and are in addition to those described in Chapter 1, General Information.

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM licensed programs that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472), the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item 132-33 will be available to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform services to overseas U.S. Government locations which are in support of national or mutual defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

SOFTWARE MAINTENANCE

a. Software maintenance as it is defined: (select software maintenance type) :

 X 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

 2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE

5.1 INSPECTION/ACCEPTANCE

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

Acceptance – see IBM's ICA and IPLA license terms for the definition of Acceptance.

5.2 GUARANTEE/WARRANTY

IBM's standard commercial guarantee/warranty is specified in the terms and conditions of the ICA and IPLA license terms stated elsewhere in this chapter.

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

5.3 TECHNICAL SERVICES

IBM provides technical support for software licenses as specified in its standard commercial license terms and conditions (see ICA and IPLA license terms).

5.4 SOFTWARE MAINTENANCE

IBM's Software maintenance terms are provided herein under the Acquisition of Software Maintenance and Passport Advantage terms.

5.5 UTILIZATION LIMITATIONS

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

1. Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
2. Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. By mutual agreement between IBM and the ordering activity, the software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
3. Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
4. (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative, for a temporary period of time; to copy computer programs for safekeeping (archives) or backup purposes; with IBM's written consent, to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
5. Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

5.6 SOFTWARE CONVERSIONS - (132-32 AND 132-33)

As a general rule, IBM does not offer full monetary credit to the Government when conversion from one version of the software to another which is made as the result of a change in operating



system, or from one computer system to another;; however, IBM offering for the Acquisition of Software Maintenance or Passport Advantage includes terms on version updates for IPLA Licensed Programs. In addition, IBM has a software migration plan for its ICA Program Licensed products which is available under the terms of Single Version Charging. Such terms are stated elsewhere in this Chapter.

5.7 DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

IBM provides a list of software products and their description in this pricelist. Additional details regarding the IBM software products can be found on IBM's internet site: www.ibm.com.

5.8 GENERAL INFORMATION

Under these terms and conditions, IBM will (1) furnish licensed programs to the Government, (2) furnish materials in support of such licensed programs, and (3) provide program services, as described herein. The Government agrees with respect to the licensed programs to accept the responsibility for (1) their selection to achieve the Government's intended results, (2) their installation, (3) their use, and (4) the results obtained there from. The Government also has the responsibility for the selection and use of, and results obtained from, any other programs, programming equipment, or services used with the licensed programs.

None of the licenses granted hereunder nor any of the licensed programs or copies thereof may be sub-licensed, assigned, or transferred between agencies or departments, including military departments without the prior written consent IBM. Any attempt to sub-license, assign, or transfer any of the rights, duties, or obligations under this Special Item 132-33 is void.

IBM is not responsible for failure to fulfill its obligations under this Special Item due to causes beyond its control.

The Government agrees that all of the terms and conditions of this Special Item applicable to restricted materials shall be applicable to materials, regardless of form, labeled "Restricted Materials of IBM" when distributed to the Government.

5.9 ORDERS

Software Acquisition is limited to commercial computer software defined in FAR Part 2.101.

Each order shall list the licensed program(s), feature(s), and/or material(s), and shall show the type and serial of the designated machine(s) on which each program and/or material are to be used, and the location of such machines. The Customer Requested Arrival Date shall be written into the order and the order shall be forwarded to IBM. In the event that IBM can't meet the Customer Requested Arrival Date, IBM shall notify the Government within 30 calendar days from the date of the certified mail receipt or the order receipt date of the Calculated Arrival Date which it can meet. Otherwise, the Customer Requested Arrival Date automatically becomes the Calculated Arrival Date.

5.10 RISK OF LOSS

If licensed programs in a tangible form are lost or damaged during shipment from IBM, IBM will replace such licensed programs and program storage media at no additional charge to the Government.

If licensed programs are lost or damaged while in the possession of the Government, IBM will replace such licensed programs at the then current commercial charges, if any, for processing, distribution, and/or program storage media. Such charges will be outside the scope of this Contract.

5.11 COMPLIANCE VERIFICATION

The Government agrees to create, retain, and provide to IBM and its auditors written records, system tool outputs, and other system information sufficient to provide auditable verification to IBM that your installation and use of Licensed Programs is in compliance with the terms herein. Unless otherwise mutually agreed to, upon 30 days written request, and no more frequently than annually, IBM may audit the use of programs provided under any order.

You further agree that IBM and its auditors may verify your compliance with the terms herein by, among other things, having reasonable access to premises in which you use or install Licensed Programs. IBM agrees to use personnel with appropriate security clearances when required. IBM will invoice You for any additional charges to which You become obligated as determined by an audit. The provisions in this paragraph shall remain in effect during the term of this Agreement and for a reasonable time thereafter to confirm deployment and use of the Licensed Programs during the term of this Agreement

5.12 CHARGES, INVOICES, AND PAYMENTS

The charges applicable to each licensed program may be a one-time charge, an upgrade charge, a periodic charge and any initial or process charge.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size). The Government agrees to provide actual usage data if IBM specifies. If the Government changes its environment such that it impacts use charges (for example, change to processor size or configuration for Programs), the Government agrees to promptly notify IBM and provide a modification for any applicable charges. IBM does not give credits or refunds for charges already due or paid. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

Initial License Charge (ILC):

In addition to some programs which have a monthly license charge, an ILC charge will apply. The ILC is billed along with the first MLC invoice (see Periodic Charges below).

One time Charges (OTC):

For new program license orders, in the event a price increase occurs from the date of signature on the delivery order to the date of receipt by IBM, IBM will honor the lower price of the order if received within the validity date on the proposal quote or if the order was received within 15 days of the signature date on the delivery order. Should the order be received after the validity date of the proposal or the 15 day period, a new or modified order will be required that reflects



the current catalog price. IBM will invoice the Government for OTC software products upon shipment.

Periodic Charges:

S/390 and zSeries Platform Programs:

Recurring charges for S/390 and zSeries platform programs, which may be monthly license charges (MLC) or annual license charges (ALC), will be calculated in full calendar month increments.

For new installations and product alterations (other than discontinuances) occurring on the first of a month, charges will begin immediately.

For new installation and products alterations occurring after the first day of the month, charges will begin the first day of the month after installation.

Products discontinued the first of a month or during a month will be charged through to the end of the month.

NON S/390 and zSeries Platform Programs:

Other platform programs with recurring charges (MLC or ALC charges) will begin billing upon the Date of Installation. If applicable, charges will be prorated based on a thirty (30) day month.

All Platform Programs:

Charges for renewal(s) of licensed programs which have been withdrawn from marketing are specified in this price list.

Charges will be invoiced at the end of the period for which the charges accrue.

For new program license orders, in the event a price increase occurs from the date of signature on the delivery order to the date of receipt by IBM, the periodic charge shall be the charge in effect upon the Date of Installation.

Primary License Charge (PLC):

A Primary License Charge applies to programs which are billed as an Annual License Charge. The PLC is billed as an one time charge upon the Date of Installation of the licensed program.

Program Upgrade Charge:

For selected licensed programs, IBM may designate a replacement program which is normally a new version of an existing program. If the product was offered as OTC, the replacement version may be offered for a Program Upgrade Charge, which is a one-time charge that is less than the full OTC amount.

The Government may qualify for the Program Upgrade Charge, if the prior version of the licensed program is discontinued upon installation of the new version.

Process Charge:

A process charge is usually a distribution charge or media charge for machine-readable materials.

Charges will be due upon receipt by the Government of the licensed programs to which such charges apply and are not refundable.

Payment:

Per FAR 52.212-4 payment is due in accordance with the Prompt Payment Act.

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

5.13 CROSS FISCAL YEAR FUNDING

IBM will accept orders which cross fiscal years provided the ordering agency's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period. The Government's purchase order shall specify the availability of funds and the period for which funds are available.

PATENT AND COPYRIGHT INDEMNITY

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

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

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

Remedies

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

1. For a Machine, the Government's net book value, provided the Government has followed generally-accepted accounting principles.
2. For a Program, the amount paid by the Government or 12 months' charges (whichever is less). If the Product is an IBM SaaS or subject to Fixed Term charges, up to twelve months' charges.
3. For Materials, the amount the Government paid IBM for the creation of the Materials.

This is subject to the Government's right to require continued use of the Products pursuant to the provisions of 28USC1498. In the event of such continued use, the Government shall notify IBM in writing of its election to continue use and agrees to undertake at the Government's expense the defense of any action against the Government and IBM shall have no further indemnification

obligation; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM.

Claims for Which IBM is Not Responsible:

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

- A. The Government's modification of a Product, or a Program's use in other than its Specified Operating Environment;
- B. Anything the Government provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Government or by a third party on behalf of the Government;
- C. The combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party;
- D. Infringement by a non-IBM Product.
- E. Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- F. the distribution, operation, or use of the Product outside Government's Enterprise or for the benefit of any third party; or
- G. Separately Licensed Code, if any, as identified in the LI for the Product.

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

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

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

LIMITATION OF LIABILITY

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

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

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

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

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

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

Items for which IBM is not liable:

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

A. Loss of, or damage to data; or

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

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

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

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

5.14 LICENSE AGREEMENT FOR "ICA" PROGRAMS

Upon acceptance of a Government order, IBM grants a non-exclusive, non-transferable license to use the Program. Programs are owned by IBM or one of its subsidiaries and are copyrighted and licensed (not sold).

Authorized Use

Under each license, IBM authorizes the Government to:

A. Use the ICA Program's machine-readable portion on only the Designated Machine unless--

1. The Designated Machine is inoperable. The Government may then use the Program on another machine temporarily.
2. The Designated Machine cannot assemble or compile the Program. The Government may then assemble or compile the program on another machine.



3. If the Government changes a Designated machine previously identified to IBM, you agree to notify IBM of the change and its effective date.
- B. Use the ICA Program to the extent of the Government's authorization obtained for the Program(s),
- C. Make and install copies of the ICA Program to support the level of use authorized, provided the Government reproduces the copyright notices and any other legends of ownership on each copy or partial copy, and
- D. Use any portion of the ICA Program IBM (1) provides in source form, or (2) mark restricted (for example, "Restricted Materials of IBM") only to
 - a. Resolve problems related to the use of the Program, and
 - b. Modify the ICA Program so that it will work together with other products.

Government's Additional Obligations

- A. The Government agrees to comply with any additional or different terms in its Licensed Program Specifications may contain, including other offerings stated herein.
- B. Ensure that anyone who uses the Program (accessed either locally or remotely) does so only for the Government's authorized use and complies with these terms; and
- C. Maintain a record of all copies and provide it to IBM at its request

Actions the Government May Not Take

The Government agrees not to do any of the following:

- A. Sublicense, assign, or transfer the license for any Program between agencies or departments, including military departments;
- B. Sublicense, assign, rent, or lease the Program to any third party without IBM's prior written consent;
- C. Reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of a contractual waiver.

5.14.1 DATE OF INSTALLATION

For a Program:

- A. Basic license: The second business day after the Program's standard transit allowance period,
- B. Copy, the date specified in a Transaction Document, on which IBM authorizes the Government to make a copy of the Program; or
- C. Chargeable component, the date the Government distributes a copy of a chargeable component in support of the Government's authorized use of the Program.

5.14.2 ACCEPTANCE

A. On the second business day after the Program's standard transit allowance period, or receipt of the Program, if earlier.

B. For process charges, the date the materials for which the process charges apply are received by the Government.

Notwithstanding anything herein to the contrary, the parties agree as follows:

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

5.14.3 WARRANTY

Each licensed program which is designated in the Price List as warranted will conform to the Specifications in effect when shipped to the Government if properly used in a Specified Operating Environment. The warranty period for a Program commences on its Date of Installation and expires when its Program Services are no longer available. Thereafter, IBM will provide program services on a chargeable basis as described elsewhere in this SIN. During the warranty period, IBM provides defect related Program Services without charge.

Program Services are available for a warranted Program for at least one year following its general availability.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible.

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

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

Unless specified otherwise, IBM provides Materials and non-IBM products, without warranties of any kind. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

5.14.3.1 REMEDIES

If a Program does not function as warranted during the first year after the Government obtains the license, and IBM is unable to make it do so, the Government may return the program and receive a full refund of the amount paid. To be eligible, the Government must have obtained the license while Program services were available for it.

In no event will IBM be liable for any damages arising from performance or nonperformance of the licensed program during the licensed program testing period or for any damages caused by the Government's failure to perform the Government's responsibilities, or for any claim against the Government by any other party, except as provided in General Information terms for "Patent and Copyright Indemnity," and "Limitation of Liability."

5.14.4 PROGRAM COMPONENTS NOT USED ON THE DESIGNATED MACHINE

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. The Government may make copies of a component and its documentation in support of its authorized use of the Program provided the Government. For chargeable components, the government agrees to notify IBM of the component's actual date of distribution which is its Date of Installation.

5.14.5 DISTRIBUTED SYSTEM LICENSE OPTION

A. For certain Programs the Government may make a copy under a Distributed System License Option (called a "DSLO" copy). When ordering additional licenses for such a licensed program, the Government must designate whether an additional Basic or DSLO License is requested. IBM charges less for a DSLO license than for a Basic license. For each DSLO License, the Government will:

1. Have a Basic license for the Program;
2. Provide problem documentation and receive Program Services (if any) only through the location of the Basic License;
3. Distribute to, install, and test on the DSLO's Designated Machine any new release, correction or bypass provided by IBM to the Basic License.
4. IBM does not provide a testing period for DSLO copies.

B. Unless the Government designates another Basic License, notice of discontinuance of a Basic License shall be notice of discontinuance of all DSLO licenses for that Basic License.

5.14.6 SPECIFIED OPERATING ENVIRONMENT

The specified operating environment is the environment in which a licensed program is designed to operate, which may be one or more IBM machine types and, in most instances, in conjunction with other IBM equipment and programs. The Licensed Program Specifications, for each warranted licensed program, will state the environment in which the licensed program is designed to operate. For licensed programs distributed on an "AS IS" basis the Specified Operating Environment will be stated in a notice of availability.

Program services for a licensed program used in other than a Specified Operating Environment are subject to limitations occasioned by the differences between the Specified Operating Environment and the Government's operating environment and by the extent of the local IBM

representative's knowledge of the Government's equipment and programs. Such program services will be subject to the following conditions:

The Program Service project office will only respond to defects which will occur when they operate the licensed program in a Specified Operating Environment.

Furthermore, the IBM representative will only operate a machine designated in the order if it was marketed or manufactured by IBM. IBM will have the right to make additional charges, in accordance with Appendix C of this Price List, for any additional effort required to perform these program services.

5.14.7 LICENSED PROGRAM SPECIFICATIONS

For each licensed program which is warranted, IBM will have published, at the time that licensed program becomes available, a document entitled "Licensed Program Specifications." Such Licensed Program Specifications may be updated by IBM from time to time and such updates may constitute a change in specifications.

5.14.8 PERMISSION TO MODIFY

The Government may modify the program's machine readable instructions or data and merge them into another program to form an updated work for the Government's own use; provided that, upon discontinuance of the licensed program, the licensed programs will be completely removed from the updated work and dealt with under this Special Item as if permission to modify or merge had never been granted. Any portion of the licensed programs included in such an updated work will continue to be subject to all terms of this Special Item.

5.14.9 EARLY SHIPMENT OF LICENSED PRINTED MATERIALS

When the Government has issued and IBM has confirmed an order for a generally available licensed program, licensed program materials which are provided by IBM in printed form will, upon request, be shipped up to six months prior to shipment of the machine readable portion of the licensed program. The licensed printed materials, thus provided, may not be copied in any form for any purpose.

If the Government does not request that the machine readable portion of the licensed program materials be shipped within six months following the date of shipment of the licensed printed materials, the Government will discontinue the license for the program and return or destroy the printed materials.

Program services, if any, for the licensed program will not be provided prior to shipment or delivery of the machine readable portion of the licensed program materials.

5.14.10 PROGRAM TESTING

IBM provides a testing period for certain ICA Programs to help the Government evaluate if they meet your needs. If IBM offers a testing period, it will start 1) the second business day after the ICA Program's standard transit allowance period, or 2) on another date specified in a

Transaction Document. IBM will inform you of the duration of the ICA Program's testing period.

IBM does not provide testing periods for DSLO copies.

In the event that the licensed program is used for productive purposes during the testing period, the testing period will be deemed to have ended as of the date upon which the Government commences productive use.

5.14.11 SHIPMENT OF PROGRAM LICENSE

Subject to conditions beyond IBM's control, licensed programs listed in this Price List will be shipped to the Government in time to meet the calculated arrival date confirmed by IBM.

Except when otherwise specified in this Price List, licensed programs will be shipped to the Government without shipping charge. Any special shipment requested by the Government will be at the Government's expense.

5.14.12 TERM/DISCONTINUANCE

Orders are effective from the date on which they are received by IBM and will remain in effect until cancelled by the Government upon written notice.

For S/390 and zSeries platform programs, the effective date of discontinuance will be the first of the month following IBM's receipt of the Government's written notice.

For all other software platform products IBM requires a one month's written notice for discontinuance. The Government may terminate a License at any time during the test period.

Whenever a license is cancelled or terminated by either party, the Government must promptly destroy all copies of the Program. The Government may retain a copy for archive purposes.

Licenses for certain replacement Programs may be obtained for an upgrade charge. When the Government obtains licenses for these replacement "ICA Programs", the Government agrees to terminate the license of the replaced Program when charges become due, unless IBM specifies otherwise.

IBM may exercise its rights to discontinue any license upon written notice if the Government fails to comply with any of the terms and conditions of this Special Item, subject to the Contract Disputes Act and FAR 52.233-1 (Disputes). Such discontinuances will terminate the Government's authorization to use the Program.

Notice should also be provided for a discontinuance which occurs at the end of the fiscal year, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. All orders automatically terminate on September 30; however, ordering offices are instructed to notify IBM in writing one month prior to the expiration of the order if the license is to be discontinued at the end of the fiscal year. Renewal of an order under the new fiscal year will be required if the license is to be continued.

5.14.13 PROGRAM SERVICES

For each licensed program the period of program service, if any, to be provided for a current release of the licensed program is specified in IBM's GSA website www.ibm.com/easyaccess/gsa. Program service will commence at the beginning of the licensed program testing period or, if there is no testing period for that license, when periodic charges are due. Program service will be subject to the provisions of "SPECIFIED OPERATING ENVIRONMENT," herein.

IBM provides Program Services for warranted "ICA" Programs per the terms stated herein. Terms for "Other IBM Program" Program Services are described in Item 5.8. If IBM can reproduce the reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of a Program. Program Services are provided 1) on an on-going basis, IBM will provide at least six months' written notice before terminating this service for a Program, 2) until the date identified, or 3) for a period specified.

5.15 IBM PROGRAM LICENSE AGREEMENT (IPLA)

LICENSED DETAILS FOR "OTHER IBM PROGRAMS" (i.e., OTC SOFTWARE, DISTRIBUTED SOFTWARE)

The license details below are for certain products within IBM's Schedule designated with a "P" in the License Type category of the software pricelist or the Licenses within the Passport Advantage pricelist. By downloading, installing, copying, accessing, or using the Program, the Government (Licensee) agrees to the terms stated herein. If the Government does not agree to these terms:

- Do not download, install, copy, access, click on an "accept" button, or use the Program; and
- Promptly return the unused media, documentation, and Proof of Entitlement to the party from who it was obtained for a refund of the amount paid. If the Program was downloaded, destroy all copies of the Program.

Documentation entitled "License Information" will be enclosed with the Program and contains additional information and terms and conditions concerning the Program and any related Program Services. The Program's LI is available at <http://www.ibm.com/software/sla/>.

Definitions

"Authorized Use" – the specified level at which the Government is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"IBM" - International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

"Program" – the following, including the original and all whole or partial copies; 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys, and documentation).

“Proof of Entitlement” – evidence of the Licensee’s Authorized Use. The PoE is also evidence of Licensee’s eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. IBM does not provide the Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the Program was obtained, provided that it specifies the Program name and Authorized Use obtained.

“Warranty Period” – one year, starting on the date the original Licensee is granted the license.

Agreement Structure

The IPLA consists of the terms and conditions as stated herein, the General terms of Chapter 1 of this Contract, the LI, and the PoE and is the complete agreement between the Government and IBM regarding the use of the Program. It replaces any prior oral or written communication between the Government and IBM concerning the Government’s use of the Program. The terms of the LI may replace or modify sections of this IPLA. It is anticipated that changes to the LI and other IBM policies will not result in terms inconsistent with Federal law. If the terms of the LI replace or modify terms of this IPLA, the Government has a right to review any additional or different terms before acceptance.

Acceptance

The Government's acceptance of a Program is the earlier of the second business day after the Program's standard transit allowance period, or receipt of the Program, when IBM provides the Government authorization to download the product via the Proof of Entitlement.

Notwithstanding anything herein to the contrary, the parties agree as follows:

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

5.15.1 LICENSE GRANT

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

Use of the Program:

IBM grants to the Government a nonexclusive license to:

- 1) Use the Program up to the Authorized Use specified in the PoE and
- 2) Make and install copies to support such Authorized Use specified in the PoE, and
- 3) Make a backup copy, all provided that:
 - a. The Government has lawfully obtained the Program and complies with the terms as stated herein.
 - b. the backup copy does not execute unless the backed-up Program cannot execute;
 - c. the Government reproduces all copyright notices and other legends of ownership on each copy, or partial copy of the Program.

- d. The Government ensures that anyone who uses the Program (accessed either locally or remotely) does so only on the Government's behalf and complies with the terms stated herein.
- e. The Government does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this IPLA Agreement; 2) reverse assemble, reverse compile, or otherwise translate, or reverse engineer the Program except as expressly permitted by law without the possibility of contractual waiver, 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program and
- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or if Licensee obtains this Program as Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this IPLA Agreement. For purposes of this Item f. a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, the Government should contact IBM or the party from whom the Government obtained the Supporting Program.)

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

Transfer of Rights and Obligations:

The Government may transfer a Program and all the Government's license rights and obligations to another party only if that party agrees to the terms of the IPLA. If the license is terminated for any reason, by either party, the Government is prohibited from transferring the Program to another party. When the Government transfers the Program, it must also transfer a copy of the IPLA terms and conditions including the LI, and the Proof of Entitlement for the Program. The transfer of the license rights and obligations terminates the current Government user's authorization to use the Program under the Proof of Entitlement. The Government may not transfer a portion of 1) the Program or 2) the Program's Authorized Use.

5.15.2 TRADE-UPS, UPDATES, FIXES, AND PATCHES

5.15.2.a Trade-ups

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

5.15.2.b Updates, Fixes, and Patches

When the Government receives an update, fix, or patch to a Program, the Government has a right to review any additional or different terms that are applicable before accepting such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to the terms stated herein for the IPLA Agreement. If the Program is replaced by an update, the Government agrees to promptly discontinue use of the replaced Program.

5.15.3 FIXED TERMS LICENSES

If IBM licenses the Program for a fixed term, the Government's license is terminated at the end of the fixed term unless the Government provides a funded delivery order to renew it.

5.15.4 MONEY-BACK GUARANTEE

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

5.15.5 WARRANTY

IBM warrants that the Program when used in its specified operating environment will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter).

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. The Government is responsible for the results obtained from the use of the Program.

During the Warranty Period IBM provides the Government with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Handbook for further information at <http://www.ibm.com/software/support>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, the Government may return the Program and its POE to IBM, or the party from who the Government obtained the Program, and receive a refund of the amount the Government paid. After returning the Program, the Government's license terminates. If the Government downloaded the Program, the Government should contact IBM, or the party from whom the Program was obtained, for instructions on how to obtain the refund.

Exclusions

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

THE WARRANTIES IN THIS SECTION ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS ABOVE, HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS IPLA AGREEMENT.

5.15.6 LICENSEE DATA AND DATABASES

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

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

5.15.7 COMPLIANCE VERIFICATION

See Compliance Verification terms under 5.11 of this Chapter. For the purposes of the IPLA Agreement the License terms means 1) the terms of this IPLA Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

Resolution – IBM will notify the Government in writing if any such verification indicates that the Government has used any program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. IBM will invoice the Government for charges associated with 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges as a result of such non-compliance.

5.15.8 THIRD PARTY NOTICES

The Program may include third party code that IBM, not the third party, licenses to the Government under this IPLA Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for the Government's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third

party code as “Modifiable Third Party Code”, IBM authorizes the government to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging the Government’s modifications to such third party code. IBM’s service and support obligations, if any, apply only to the unmodified Program.

5.15.9 CHARGES

The amount payable for a Program license is a one-time charge. Charges are based on Authorized Use obtained which is specified in the POE. If the Government wishes to increase its Authorized Use, the Government must notify IBM and pay any applicable charges. IBM does not give refunds or credits for charges already due or paid.

For Programs delivered electronically in the United States for which the Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

The Government agrees to be responsible for any sales and use tax liabilities that may arise as a result of Government’s subsequent redistribution of Programs after delivery by IBM. If a customs duty, tax, levy or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the Government was originally granted the license, then the Government agrees that it is responsible for, and will pay, any amount imposed.

5.15.10 TERMINATION

Subject to the Contract Disputes Act and FAR 52.233-1 (Disputes), IBM may terminate the Government's license if it is determined the Government failed to comply with the terms stated herein. If the licenses are either party terminated s the license, the Government must destroy all copies of the Program. Any terms of this IPLA that by their nature extend beyond the termination of the Program remain in effect until fulfilled and apply to both party’s respective successors and assignees.

5.15.11 GENERAL

Neither party is relying on any representation not specified in this IPLA Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in the Warranty section above; 2) the experiences or recommendations of other parties; or 3) any results or savings that the Government may achieve.

5.15.12 ACQUISITION OF SOFTWARE MAINTENANCE

The terms and conditions govern the acquisition of Software Maintenance (SWM), which may also be referred to as Software Subscription and Support (S&S). Software Maintenance is

available for when purchasing IPLA Software licenses outside of Passport Advantage. IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

For new license purchases, Software Maintenance is one year, or the period IBM specifies in the Proof of Entitlement which accompanies new license purchases, or other document that IBM provides to the Government, beginning on the date of acquisition and ending on the same day of the corresponding month of the following year.

5.15.12.1 IBM'S SOFTWARE MAINTENANCE INCLUDES:

The Government agrees to:

1. To acquire Software Maintenance at the same authorized level of use as the Program for which you are acquiring it, as well as all copies of the Program at the same location. This includes Programs that the Government already acquired and those that you may acquire subsequently.
2. To be responsible for the results obtained from the use of the Software Maintenance;
3. To remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission to assist you in isolating the software problem cause;
4. To provide sufficient, free, and safe access to the Government's facility for the fulfillment of IBM's obligations.
5. To have specified equipment or programs installed at your location if Software Maintenance is provided through a telecommunications link, and
6. Not to assign, or otherwise transfer, this Agreement or the Government's rights stated herein, or delegate its obligations, without prior written consent. Any attempt to do so is void.

Software Maintenance Transferability:

The Government may transfer their Software Maintenance only to a location that is within its agency or department provided that 1) the applicable Program is transferable and is transferred in accordance with its license terms and 2) the entity receiving the Program agrees to the terms herein. Transferring between military departments requires prior written consent from IBM.

Termination:

The Government may terminate the Support by providing IBM one month written notice. Such notice should be provided to IBM for termination at the end of the Government's fiscal year/anniversary date for the renewal, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds. If not terminated, a delivery order must be issued effective the first day of the succeeding fiscal year or contract year to ensure there is no lapse in time subjecting the Government to a Software Maintenance After License Charge.

Withdrawal:

IBM may withdraw Software Maintenance for a Program by publishing a notification of withdrawal at www.ibm.com/software/supportlifecycle not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which the Government has provided payment and IBM has not yet fully provided Software Maintenance to you, IBM will either

continue to provide Software Maintenance until the end of the current Support Period or give you a prorated refund.

Warranty:

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its current description.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which we are not responsible.

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

IBM does not warrant uninterrupted or error-free provision of Software Maintenance.

Charges: One-Time-Charge with options to renew on the yearly anniversary date. Support Charges may vary, depending on, for example, the machine (type/model), the Program selected, or group of Programs. If the Government returns a Program for a refund as allowed under its license terms, IBM will terminate, and refund any charges paid for Software Maintenance ordered with the Program.

Programs running on IBM distributed platforms (e.g., IBM Power Systems), IBM System i, IBM System p, or IBM System x or equivalent.

IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

General:

1. IBM makes available to you the most current commercially available version, release or update to all of the Eligible Programs for which you acquire Software Subscription and Support, should any be made available. The Government's right to upgrade to a new version, release or update may be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed. Information on ordering versions, releases, or updates can be found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss> and selection the Entitled Software Update ("EUS") screen tab.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and b) code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during normal business hours (normal business hours are 8 a.m. to 5 p.m. in the local time zone where you receive this Service, Monday through Friday, excluding national holidays). This assistance is not available to your end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide, which may be found at www.14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details. A 24x7 (every day of the year) all severity option is available at extra charge. During normal

business hours, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than normal business hours, IBM's response time objective for critical problems (Severity 1) is two hours and if you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than normal business hours, IBM's response time objective is within two hours of the start of normal business hours on the next business day. IBM's initial response (either voice or electronic) may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

4. In some instances, IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.
6. The initial Support Period begins on the date that IBM makes the Program available to you. If the Program is part of an iSeries grouped offering, then the Initial Support Period duration will be adjusted so that the expiration coincides with that of the other Programs in the group. In such event, the Initial Support Period may be less than one year.
7. This Service is provided by United States personnel solely for servers that are located within the United States. For calls that originate from outside of the United States: 1) toll free telephone access is not available, 2) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your designated Point of Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the United States server location, and 5) the diagnosis and repair of data encryption will be discussed only with personnel at the United States server location.

Eligible Programs: Licensed programs for which this Service is available are listed at <http://www.ibm.com/services/sl/swm/> or may be obtained from your IBM marketing representative. The listing of Eligible Programs contains the last date of service for each respective release of licensed programs. IBM will support only current releases. It is your responsibility to insure that, when calling in for service, your software is current.

Software Maintenance After License Fee: The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order. In no event shall the Software Maintenance After License Fee exceed the amount that the customer would have paid for maintenance if the Service was not previously discontinued.

Software Maintenance for Programs running in the System z environment or equivalent:

1. Eligible Programs: Licensed Programs for which Support and Subscription is available are listed at www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo/. Click on Exhibits: Subscription and Support.

2. **Support Period:** One year. When you order Support and Subscription (S&S) with a Program, the initial Support Period begins on the date that IBM makes the Program available to you. If you terminate S&S, IBM does not issue credit for the unused portion of a Support Period. Subsequent Support Periods begin on the day following the end of the preceding Support Period.
3. **Anniversary Adjustment:** When you acquire S&S initially or resume it, or prior to the end of the then current Support Period for renewals, you may request that the Support Period duration be adjusted to end at a month of your choice. If you do not choose a date, IBM will inform you of the end date. The Support Charge will be pro-rated accordingly.
4. **Support and Subscription:** For the unmodified portion of a Program, and to the extent problems can be recreated in the Specified Operating Environment, includes:
 - a. **Code Corrections:** code to correct reported, substantial deviations from the Program's then applicable Specifications.
 - b. **Fixes:** existing Code Corrections, restrictions or known bypasses for reported problems.
 - c. **Program Updates:** periodic releases of collections of Code Corrections, Fixes, functional enhancements (including modifications to accommodate applicable statutory or regulatory changes) and new versions and releases to the Program and documentation.
 - d. **Technical Assistance:** a reasonable amount of remote assistance via telephone, mail, facsimile (fax) or e-mail to address suspected Program defects. Technical assistance is available from the IBM support center. Additional details regarding Technical Assistance, including IBM contact information, are provided in the Software Support Handbook at www14.software.ibm.com/webapp/sas/f/handbook/home.html.
 - e. S&S does not include assistance for 1) design and development of applications, 2) Customer's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible for under these terms.
 - f. **Resumption Fee:** Equal to the total of all Support charges that you would have paid during the lapse interval (i) had you not declined S&S at the time you acquired the license for a Program and now wish to acquire S&S or (ii) if you wish to resume S&S that you had previously terminated. A Support Period in such an instance begins on the date that IBM accepts your order.
 - g. **Support Upgrade:** If you upgrade S&S due to an increase in the level of use of a license, any increase to the Support Charge will be pro-rated to the next anniversary.

Renewal: IBM will renew expiring software maintenance provided a funded delivery order is received by the end of the Support Period. Subsequent Support Periods begin on the day following the end of the preceding Support Period.