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

TERMS AND CONDITIONS

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

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

7.1 SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

GSA has negotiated hourly service rates but ordering activities are responsible for any necessary statement of work, the reasonableness of the number of hours and the reasonableness of the labor mix between labor categories.

IBM provides the Government with several IT Support options under this SIN. Services include Technical and Consulting Services and Software Support; and IT professional rates may be found in Appendix C. The various offerings are identified below, and charges are outlined in Appendix D.

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

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

7.2 PERFORMANCE INCENTIVES

- A. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- B. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- C. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

7.3 ORDER

- A. Agencies may use written orders, Electronic Data Interchange (EDI) orders, funded blanket purchase agreements (BPA's), individual purchase orders, credit cards or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation-May 2003), Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- B. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence, except as may be otherwise agreed to by both IBM and the user agency with GSA's concurrence.

For Performance Based Services notwithstanding any other provisions in this contract including but not limited to paragraphs **7.3.(B)** and **1.24**, in the event of conflict between the unique terms, conditions and prices of each negotiated engagement and the GSA/IT Schedule terms, the Performance Based Service's task order shall govern.

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

7.4 PERFORMANCE OF SERVICES

- A. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- B. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by IBM and the ordering activity.

C. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

D. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulations or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all contractor travel.

7.5 STOP WORK ORDER (FAR 52.242-15)(AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

7.6 INSPECTION OF SERVICES

The Inspection of Services - Fixed Price (AUG 1996) (Deviation-May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. Since the IBM services performed under this contract are commercial items, they will be performed in accordance with



IBM's standard warranty provision and acceptance criteria. The Inspection-Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

7.7 RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

7.8 RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

7.9 INDEPENDENT CONTRACTOR

All IT Services performed by the Contractor or its subcontractors under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Government.

7.10 ORGANIZATIONAL CONFLICTS OF INTEREST

A. Definitions

"Contractor" means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

"Contractor and its affiliates" and "Contractor or its affiliates" refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract, without some restriction on activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

B. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the Government, ordering offices may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

7.11 INVOICING

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity, if appropriate, on individual orders. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

In the event that a price increase occurs from the date of issuance of a delivery order (for a new service) to the date of receipt, the price shall be that which is indicated in IBM's quote or that which is agreed to in a statement of work (SOW), provided that the order is received within the timeframe specified. In the absence of an IBM quote or SOW, then the price shall be that which is in effect on the date of receipt by IBM.

7.12 PAYMENT

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (Feb 2007) (ALTERNATE I – Feb 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (Feb 2007) (ALTERNATE I – Feb 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

- (a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- (b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
 - (1) The offeror;
 - (2) Subcontractors; and/or
 - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

IBM professional service rates, as specified in Appendix C shall apply to (b)(1), (2), and (3) above.

7.13 RESUME

Resumes shall be provided to the GSA Contracting Officer or the user agency upon request.

7.14 INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract, and will be considered a non-schedule item for purposes of including the costs on the delivery order. The costs will be

negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

7.15 APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order. Such written consent shall be provided to IBM with the issuance of the order to perform the service.

ADDITIONAL TERMS FOR IBM SERVICES

7.16 STATEMENT OF WORK

A separate Statement of Work will be signed by both IBM and the Government for services provided other than hourly assist services. Upon acceptance by IBM, IBM agrees to provide the Services described in the Statement of Work.

The Statement of Work includes, for example:

- A. IBM's responsibilities
- B. The Government's responsibilities
- C. The specific conditions (Completion Criteria), if any, that IBM is required to meet to fulfill its obligations
- D. A performance period for Services and an estimated schedule for planning purposes, and
- E. Applicable charges (not including taxes) and any other terms.
- F. Resumes shall be provided by IBM upon request.

If a Statement of Work contains an estimated schedule, both IBM and the Government agree to make reasonable efforts to carry out our respective responsibilities according to that Schedule. If the Statement of Work contains Completion Criteria, IBM will inform the Government when each criteria is met. The Government then has 10 days to inform IBM if the Government believes that IBM has not met the criteria. The project is complete when IBM meets the Completion Criteria.

Changes to Statements of Work

When both IBM and the Government agree to change a Statement of Work, IBM will prepare a written description of the agreed change which must be signed by both IBM and the Government. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, additional charges may be required for analysis of the changes. Additional work will not commence until funded authorization is received from the Government.

7.17 ORDERS FOR SUPPORT SERVICES AND OPERATIONAL SUPPORT SERVICES

The Government's order shall contain a description of the specific service being requested.

7.18 REQUIRED CONSENTS

The Government is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in a Statement of Work. A Required Consent means any consents or approvals required to give IBM or our subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and our subcontractors to perform the Services set forth in the Statement of Work without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such product. IBM will be relieved of the performance of any obligations that may be affected by your failure to promptly provide any Required Consents to IBM.

7.19 CONTROL AND SUPERVISION

IBM and the Government is each responsible for the supervision, direction, control, and compensation of their respective personnel.

The tasks on which assigned personnel assist shall remain the responsibility of the Government. Therefore, IBM does not guarantee that the Government's task will be accomplished under this contract, only that assistance shall be provided. No estimate made by IBM of the assistance to be provided to the Government is guaranteed to any extent or in any way.

7.20 PERSONNEL

In recognition of the fact that assigned personnel to the Government under this contract may perform similar services from time to time for others, this contract shall not prevent IBM from performing such similar services or restrict IBM from using the personnel provided to the Government under this contract. IBM reserves the sole right to determine the assignment of its employees.

Work schedules may be set forth in the Government's order. IBM will attempt to provide personnel in accordance with such schedules subject to circumstances beyond IBM's control. Should such personnel be unable to perform scheduled services under this contract because of illness, resignation, or other causes beyond IBM's reasonable control, IBM will attempt to replace such personnel within a reasonable time, but IBM shall not be liable for failure to replace such personnel within the schedule. All schedules may be revised by mutual agreement.

IT Professional Services may be performed by both IBM personnel and subcontracted non-IBM personnel. IBM will provide IT Professional Service personnel with the necessary technical skills.

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.



IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

7.21 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

7.22 ACCEPTANCE

- A. For items having Completion Criteria (in the statement of work), when IBM meets the Completion Criteria.
- B. For hourly service, upon completion of the service hours.

7.23 WARRANTY FOR IBM SERVICES

For each IBM Service, IBM warrants that it will be performed:

- A. using reasonable care and skill; and
- B. according to a mutually agreeable Statement of Work or its current description, including any completion criteria.

Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

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

The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT

NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs (IBM Programs licensed under a separate IBM license agreement, e.g., IBM International Program Licensing Agreement) and Non-IBM Programs (Programs licensed under a separate third party License agreement) may be found in their license agreements.

7.24 MATERIALS OWNERSHIP AND LICENSE

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as “Type I Materials,” “Type II Materials,” or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as “Type I Materials” and each such Material will constitute a “work made for hire” to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer’s Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM’s or its suppliers’ works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this item.

Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either IBM or the Government, or jointly, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either the Government or IBM.



7.25 OFFERINGS

7.25.1 TECHNICAL AND CONSULTING SERVICES

For detailed skill descriptions and rates see Appendix C

Services which may be provided under this Special Item Number include, but are not limited to:

- Conversion Support
- Database Planning and Design
- Data Records Management
- Information Technology Consulting
- Implementation Support
- Network/Communications
- Programming
- Project Management
- Resources and Facilities Management
- Systems Analyst/Design
- Systems Engineering
- Systems Installation
- Security
- Image System
- Independent Validation and Verification
- Software Testing
- System Testing
- Training

7.25.2 TRAVEL REIMBURSEMENT AND OTHER CHARGES

Contractor travel will be in accordance with the Federal Travel Regulation or Joint Travel Regulations, as applicable. Established Federal Government per diem rates will apply.

The Government agrees to pay charges for these services including Billable Travel Time, if applicable, described hereafter in accordance with the rates set forth below. A one-hour minimum charge applies.

Costs for transportation and per diem (lodging, meals and incidental expense) are directly reimbursable by the ordering agency. Not-to-Exceed (NTE) amounts will be negotiated with the agency prior to the acceptance of each delivery order as appropriate. Travel time, as defined below, is billable at the same hourly rates as set forth in the Services price list.

Billable Travel Time is travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. Travel time will be calculated as the lesser of the actual travel time incurred, or the normal travel time from/to the nearest IBM Location to/from the Government's location, or the normal travel time from/to the individual's assigned IBM location.

In the event the Government requires a specific technical skill which is not available from the normal servicing IBM Location, Billable Travel Time means the actual travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. In such event, the Government will be notified in advance and its authorization obtained when such billable travel time is to be incurred.

In addition to the charges laid out herein, there may be charges applicable to this contract for special or unusual expenses incurred by IBM which are necessary to perform these services. If applicable, these charges will be set out separately in the Government's order.

7.25.3 TECHNICAL AND CONSULTING SERVICES PROJECT TERMINATION

Either party (IBM or the Government) may terminate a project on written notice if the other party does not meet its obligations concerning the Statement of Work. Upon termination, IBM will stop work in an orderly manner as soon as practical.

The Government agrees to pay IBM for all Services provided and any Products and Materials delivered through the project's termination and any charges IBM incurs in terminating subcontracts, if any. The provisions of the Government's rights to Terminate for Convenience shall be in accordance with FAR 52.249-2.

7.26 PERFORMANCE BASED SERVICES

Performance Based Services include a wide variety of tailored services and may include service level objectives. Examples of such IT Solutions are: Web Hosting Services, Colocation Services, Seat Management Services and Managed Storage/Storage on Demand Services. These Performance Based Services may include elements in other SINs of GSA's IT Schedule. Offers are made in response to a SOW issued in accordance with the IT Professional Services ordering procedures as set forth in SIN 132-51 entitled "Ordering Procedures," and may include unique terms, conditions and prices. As opportunities are identified, each offering will be established with the Agency based on their unique requirements.

7.27 MOVEMENT OF EQUIPMENT (REINSTALLATION, DISCONTINUANCE, REARRANGEMENT)

IBM offers a wide range of services including Rearrangement, Discontinuance, and Reinstallation services under this GSA Schedule. In addition, IBM will customize the offering to meet the Government's needs and may include other services such as cabling (bus and tag and/or fiber) or provide movers.

The Government shall notify IBM in writing at least 30 days prior to the rearrangement of equipment at the same installation site or movement to another location. Maintenance charges will be interrupted only for relocation of equipment, not for rearrangement within the same



installation, and shall cease at the end of the day stated in the Government's notice. Maintenance charges shall be reinstated on the day following the first day the equipment is in place and in good operating condition at the new location.

IBM provides Movement of Equipment Services within the 48 contiguous states and the District of Columbia. On a case-by-case basis IBM may provide these services outside of these designated locations.

IBM's Responsibilities:

Discontinuance Services: IBM will prepare the Government's Machines, and identify the items normally shipped with them, for shipment in accordance with IBM's standard practice. IBM will identify and place appropriate service manuals, diagnostics, licensed internal code, and other items in shipping containers (provided by IBM). If requested, IBM will perform additional activities such as the retrieval and packing of cables (including channel interface cables or other cables the Government specifies), as well as other items which the Government may request, for shipment in containers which the Government supplies or which IBM may supply if requested. These additional activities and packing material will be priced separately and the terms and conditions included in the Statement of Work.

Rearrangement Services: IBM will disassemble and reassemble Machines in accordance with our standard practice for rearrangement of Machines within the same room. Cables, terminators, and other items will be repositioned as required. Such a move does not include complete discontinuance and reinstallation services. IBM will identify the items which are normally moved with the Machine. IBM will test the Machines to conform with their Specifications after reinstallation, including active IBM features.

Reinstallation Services: IBM will reassemble the Machines, including the removal of any internal packing materials and the interconnection of required IBM cables to support the reinstallation activities. Interconnection is defined as the attachment of cables that are in place and labeled to the Machine(s) being reinstalled. Cabling also includes the connection of all inter-frame cables. If requested, IBM will perform additional cabling activities such as the reinstallation of interface cables and network cables for an additional fee. IBM will test the Machines to conform to their Specifications, including active IBM features, and install or reconfigure the Machine diagnostics.

Government Responsibilities:

The Government is responsible to do the following:

- A. Inform each designated Location(s) of the work to be done and the estimated schedule for such Location;
- B. Provide the information and requirement necessary for IBM to perform the Services in a timely manner;
- C. Ensure the Machines are functional and conform to their Specifications, including active IBM features prior to the start of the Services;
- D. Make back-up copies of any relevant program and data;
- E. Provide appropriate security clearances for IBM personnel; and
- F. Obtain all approvals, as necessary, for access to the building.

The Government must notify IBM if non-IBM personnel will be used to lay, remove, connect, or disconnect the interconnecting cables between the Machines. Any repair, delays or other costs resulting from such non-IBM activity will be an additional charge to the Government.

The Government is responsible for charges for repairs to:

- A. Correct Machine malfunctions, unless such repairs are covered by an existing IBM agreement;
- B. Correct the results of repair or reconfiguration work done by others;
- C. Correct the results of warehouse damage or visible transit damage occurring while the Machines are not under IBM's control; and
- D. Replace missing parts or parts IBM did not furnish for the Machine that require replacement.

Damage:

IBM will be responsible for physical damage to the machines during disassembly and/or reassembly of the machines only while the machines are under the control of IBM or IBM-selected independent contractors. The Government is responsible for reporting physical loss or damage to the Machines. IBM must receive such notification in writing within 10 working days after the service is performed. IBM's responsibility for damage as stated above is contingent upon IBM's receipt of such notice. In no event will IBM be liable for damage caused during shipment, including invisible transit damage.

Prices:

Prices for Reinstallation, Discontinuance and Rearrangement services are based on rates listed in Appendix C of this schedule. Other charges associated with the service per the agency's unique requirements will be priced separately, these may include: packing material, movers, rigging, physical planning, cabling, replacement value coverage.

A Project Manager will be required for services that include movers, rigging or other coordination activities. The charge for a Project Manager will be based on the rates identified in Appendix C of this Schedule.

Orders:

Delivery orders for these services must include:

- A. Type/serials of all machines which Machine Movement Services are requested,
- B. Relevant addresses,
- C. Identification of the type of service required
- D. A requested time frame in which the service is to be performed,
- E. The Government's designated point of contact: name and telephone number.

7.28 SUPPORT SERVICES

Charges for these Services are found in Appendix D.

7.28.1 zSERIES SOFTWARE SERVICES

Alert

IBM provides the following for selected zSeries Products:

- A. Automatic electronic notification of High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and any Program Temporary Fixes ("PTFs") we discover to be defective (called "PE PTFs")
- B. Information regarding the installation of new releases of Products or installation of preventive service packages;
- C. Access to Product cross-reference information;
- D. The ability to order PTFs and request their electronic or physical delivery; and
- E. The ability to order preventive service packages.

Resolve

Provides electronic Services to assist the Government in identifying and resolving problems. IBM will provide:

- A. Tracking of Authorized Program Analysis Reports (called "APARs") and Program Temporary Fixes (called "PTFs");
- B. The ability to electronically report code-related problems to the IBM support center and receive an electronic response;
- C. Access to Product cross-reference information;
- D. Access to information on the maintenance of Products and diagnostic information on non-IBM problems;
- E. Access to Program technical information data bases, including a questions and answer library;
- F. The ability to order PTF's electronically and request electronic or physical delivery;
- G. The ability to report a suspected hardware problem to IBM electronically; and
- H. Information regarding the installation of products or installation of PTFs.

Resolve is charged on a per USERID basis as specified in Appendix D of the pricelist. USERIDs are assigned on an individual basis and are not to be shared.

SoftwareXcel enterprise edition for zSeries

Provides the Government the following package of services:

1. Remote Assistance with the operation of supported Programs within specific product groups running under designated operating systems.
2. Alert which provides electronic notification of and information about potential problems with selected IBM products.
3. Resolve which provides electronic services to assist the Government in identifying and resolving problems with the operation of its eligible System/390 Machines and eligible Programs installed on them.

4. Monthly Status Reports

The following definitions and terms apply to Remote Assistance:

Full Shift means 24 hours a day, seven days a week, including national holidays.

Off Shift means all hours outside Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. In the local time zone where you receive the assistance, Monday through Friday (excluding national holidays).

Supported Products means those products contained within designated product groups that run under identified operating systems for the zSeries hardware platform. Supported Products are identified in the Supported Products List located at IBM's internet address <http://www.ibm.com/services/sl/products, or as otherwise provided by IBM>. The Supported Products List will identify the products, product groups, and operating system groups for the zSeries hardware platform that are eligible for this assistance. The Supported Products List will change periodically to reflect Supported Product additions or deletions, (for example, deleting products at their end of currency date). IBM may withdraw support for products on the Supported Products List at any time without written notice to you.

IBM's Responsibilities:

IBM provides the Government remote assistance (via an electronic search and questioning capability, at no additional charge) for the following requests related to Supported Products:

1. Basic, short duration installation, usage, and configuration questions;**
2. Code-related problem questions;***
3. Questions regarding IBM Supported Product publications,**
4. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems);** and
5. For known defects, available corrective service information and program fixes which the Government is entitled to receive under the Program Services terms identified in this contract,***

**Note: For an additional charge, the Government may receive this assistance via telephone from IBM's support center.

***This assistance is also available via telephone from IBM's support center. Telephone assistance is included in the Government's Program license charge.

In addition, IBM provides the Government the capability to have IBM and the Government concurrently view the Government's code-related problem data.

Multi-Site Discount:

The Government may be eligible to receive a multi-site discount. Qualification of this discount is based on the number of sites the procuring agency is paying for and where Government personnel are interfacing with IBM for the SoftwareXcel service.

Response Criteria:

IBM will use commercially reasonable efforts to provide a response to each of the Government's requests as follows:



- A. For other than code-related problems,
1. Within two hours of electronic receipt during Prime Shift and if received during Off-Shift, within two hours of the start of Prime Shift on the next business day (IBM is not responsible for delays in response delivery caused by systems and network problems), and
 2. If the Government orders the telephone support upgrade, within two hours of telephone receipt during Prime Shift and for Full Shift telephone coverage, within two hours of telephone receipt during the Off-Shift for those requests that the Government specifies to be Customer Critical Problems and within four hours of telephone receipt during Off-Shift for all other requests (Customer Critical Problem means a problem for which you have no known work around resulting in a critical disruption in your business operations); and
- B. For code-related problems, within one hour of electronic or telephone receipt during available support hours when premium response is requested. Available support hours within the contiguous United States and Puerto Rico are during Prime Shift. Available support hours within Alaska and Hawaii are during the hours of 11 a.m. to 8 p.m., Eastern Time, Monday through Friday (excluding national holidays).

IBM's initial response may result in resolution of the Government's request or it will form the basis for determining what additional actions may be required to achieve technical resolution of the request.

Government's Responsibilities:

- A. Ensure the Government has properly licensed all Programs for which assistance is requested;
- B. Retrieve and review a current Supported Products List to verify whether there have been any additions or deletions of products within the specified product groups;
- C. Meet the prerequisites IBM specifies for electronic access to IBMLink;
- D. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to problems the Government requests assistance with; and
- E. Provide IBM will appropriate remote access to the Government's system to assist in isolating and determining the problem cause. The Government will remain responsible for adequately protecting the system and all data contained therein whenever IBM remotely accesses it with the Government's permission.

Charges for SoftwareXcel enterprise edition for zSeries are based on the largest processor and each additional processor, at each of the Government's supported locations, with installed Programs for which the Government has ordered this Service. All processors at your supported locations must be covered under this Service. The Government must provide IBM with written notice of changes to their processor inventory within one-month after changes occur. Such changes may cause revision to charges for this Service.

SoftwareXcel basic edition for zSeries

- A. Remote assistance questions regarding the operation of supported Programs within specific product groups running under the designated operating systems.

The following definitions apply for this assistance:

Off Shift means all hours outside Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the assistance, Monday through Friday (excluding national holidays).

Supported Products means those products contained within designated product groups that run under identified operating systems for the zSeries hardware platform. Supported Products are identified in the Supported Products List located at IBM's Internet address <http://www.ibm.com/services/sl/products>, or as otherwise provided by IBM. The Supported Products List will identify the products, product groups, and operating system groups for the zSeries hardware platform that are eligible for this assistance. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date). IBM may withdraw support for products on the Supported Products List at any time without written notice to the Government.

IBM Responsibilities

IBM will provide the Government with remote assistance (via an electronic search and questioning capability) for the following requests related to supported products:

1. Basic, short duration installation, usage, and configuration questions;
2. Code-related problems and questions; ***
3. Questions regarding IBM Supported Product publications;
4. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
5. For known defects, available corrective service information and program fixes which the government is entitled to receive in the Program Services terms of this Schedule.***

*** Note: this assistance is also available via telephone from IBM's support center. Such telephone assistance is included in the Government's Program License charge.

IBM will provide the Government with unique user Id's authorized for this Service.

Response Criteria

IBM will use commercially reasonable efforts to provide a response to each of the Government's requests for other than code-related problems, within two hours of electronic receipt during Prime Shift and if received during Off-Shift, within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

IBM's initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of the Government's request.

Government Responsibilities

The Government agrees to:

1. Ensure the Government is properly licensed to all Programs for which the Government requests assistance;
2. Retrieve and review a current Supported Products List on a regular basis to verify whether there have been any additions or deletions of products within your product groups;
3. Meet the prerequisites IBM specifies for electronic access to IBMLink;

4. Ensure that only the end user authorized for a particular user ID uses the user ID; and
 5. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to problems the Government requests.
- B. Resolve, which provides with electronic Services to assist you in identifying and resolving problems with the operation of Eligible System/390/zSeries Machines and eligible Programs installed on them.

7.28.2 P SERIES SOFTWARE SERVICES

Alert for pSeries

Alert for pSeries provides automatic daily notification for selected IBM Products of 1) High Impact and Pervasive Authorized Program Analysis Reports (call "HIPER APARS"), 2) any Program Temporary Fixes IBM discovers to be defective (called "PE PTFs), 3) latest available fixes, and 4) security advisories. IBM provides notification via e-mail for up to three different addresses of your choice.

IBM Responsibilities

IBM will provide you Alert notifications regarding each of your specified pSeries systems based on the parameters you choose when setting up this Service. If you implement IBM Service Agent, IBM will tailor the maintenance information that it provides to you for your specific environment.

Your Responsibilities

If you do not currently have an IBM Registration ID, you agree to obtain one at <https://www.ibm.com/account/profile/us?page=reg>. The IBM Registration ID must be used to 1) access the Alert Web site, 2) set up your preferences for Alert notifications, and 3) indicate which type of notifications you choose to receive.

IBM eServer pSeries performance management

Performance Management provides the Government with Web-based access to utilization and performance data for your designated eServer pSeries or IBM RS/6000 systems.

IBM will:

1. Receive and store your system data for those time periods you have specified for each covered system;
2. Prepare performance and utilization charts and reports based on the data received;
3. Develop and maintain a Web site where users you authorize may view your system performance and utilization charts and reports;
4. Maintain your system data including charts and reports for the length of time documented at the Web site; and
5. Provide general instructions and information (called 'Level 1 Support') via telephone from our support center in response to the Government's telephone requests regarding:
 - a. Data collection from the Government's system;

- b. Transmission of data to IBM;
- c. Access to the Web site including entitlement and registration for users authorized by you; and
- d. Interpretation of your system performance and utilization charts and reports.

IBM will provide such Level 1 Support during Prime Shift only, which means our standard business hours in the local time zone where the Government receives the Service (for example, 8 am to 5 pm) Monday through Friday, excluding holidays.

The Government agrees to:

1. Satisfy the hardware and software system requirements, specified by IBM, prior to start of this service. This includes ordering (at no additional charge to you), installing, and activating IBM Electronic Service Agent for IBM pSeries and IBM RS/6000 Servers which enables collection of data from the Government's designated system and transmission of that data to IBM. IBM provides this IBM Electronic Service Agent software subject to the terms of the agreement provided with it;
2. Modify the Government's data collection procedures to enable the capture of data for the Service;
3. Provide adequate disk space for temporary and static files for both client and server systems;
4. Manage registration and entitlement for those users the Government authorizes to access the Web site; and
5. Provide a modem and dial-up communication line that can be used to transmit the collected data to IBM.

Charges for this Service are based on the number of licenses of the AIX operating system supported under this Service. The Government is also responsible for any communication charges it may incur as part of this Service.

System and workload resource utilization and performance information used to prepare the Government's reports is gathered using client code. The collected data is stored daily on each client after which it is collected by the Service Agent for AIX client to process for transmission to IBM. Once the data is received by IBM, it will be analyzed to produce your reports.

Access to the pSeries performance management Web site requires an IBM Registration ID. If you do not have an IBM Registration ID, one can be obtained at <https://www.ibm.com/account/profile/us?page=reg>

The information gathered from the Government's IBM pSeries or IBM RS/6000 server will be used to generate the Government's Service reports. In addition, the Government agrees that IBM may use and share the data so collected ("Your Data") within the IBM Enterprise and with third parties such as subcontractors and consultants under contract to IBM without limitation, including for purposes of problem determination, assisting the Government with performance and capacity planning, maintaining existing and developing new business relationships with IBM, notifying the Government of existing or projected resource constraints, and assisting IBM to enhance IBM Products. The Government also agrees that Your Data may be transferred to such entities in any country whether or not a member of the European Union.

The Government may authorize IBM to share Your Data with other third parties, including one or more Solution Providers and Business Partners to make them aware of the Government's

performance and capacity demands and to enable them to provide the Government with a higher level of service.

IBM Software Maintenance for AIX Operating Systems

Terms and conditions for this offering may be found in Chapter 5, SIN 132-33 Perpetual Software License

7.28.3 iSERIES SOFTWARE SERVICES

Alert

Alert provides automatic weekly notification for selected IBM Products of 1) High Impact and Pervasive Authorized Program Analysis Reports (called "HIPER APARS") and 2) any Program Temporary Fixes we discover to be defective (called "PE PTFs"). IBM provides notification via the Government's choice of available delivery methods.

IBM Responsibilities

IBM will provide you Alert notifications regarding each of your specified iSeries systems based on the parameters you choose when setting up this Service. If you implement IBM Service Agent, IBM will tailor the maintenance information that it provides to you for your specific environment.

Your Responsibilities

If you do not currently have an IBM Registration ID, you agree to obtain one at <https://www.ibm.com/account/profile/us?page=reg>. The IBM Registration ID must be used to 1) access the Alert Web site, 2) set up your preferences for Alert notifications, and 3) indicate which type of notifications you choose to receive.

PM/iSeries

Provides utilization and performance data for the OS/400 systems the Government has designated.

IBM Responsibilities

IBM will provide the Government with a set of performance analysis reports regarding each of the specified OS/400 systems for the time period the Government has defined (for example, 8 a.m. to 5 p.m.) for the calendar period selected (for example, monthly or quarterly). If an electronic delivery method is selected by the Government, IBM's reporting calendar period will be monthly.

Your Responsibilities

The Government agrees to activate, per IBM's instructions, the PM/400 data collection software that is part of the Government's OS/400 operating system. The Government must also set up a modem and dial-up communication line that can be used to transmit the collected data to IBM.

Access to the performance management (PM iSeries) Web site requires an IBM Registration ID. If you do not have an IBM Registration ID, one can be obtained at <https://www.ibm.com/account/profile/us?page=reg>.

The Government has the option to have the reports generated from the data, delivered via hardcopy mail or electronically.

The Government is responsible for any communication charges you incur associated with the Service.

Data Collection

Systems utilization and performance information used to prepare reports is gathered from the Government's AS/400 system by the performance monitoring function of OS/400. For details on exactly what information is gathered by the performance monitoring function, please refer to the OS/400 Work Management manual that is shipped with the system.

Data Usage

The information gathered from the AS/400 systems will be used to generate PM/iSeries Service reports. In addition, the Government agrees that IBM may use and share the data so collected ("Your Data") within the IBM Enterprise and with third parties such as subcontractors and consultants under contract to IBM without limitation, including for purposes of problem determination, assisting the Government with performance and capacity planning, maintaining existing and developing new business relationships with IBM, notifying the Government of existing or projected resource constraints, and assisting IBM to enhance IBM Products. The Government also agrees that "Your Data" may be transferred to such entities in any country whether or not a member of the European Union.

The Government may authorize IBM to share "Your Data" with other third parties, including one or more Solution Providers and Business Partners to make them aware of the Government's performance and capacity demands and to enable them to provide the Government with a higher level of service.

IBM Software Maintenance for eServer

Terms and conditions for this offering may be found in Chapter 5, SIN 132-33 Perpetual Software License.

7.29 OPERATIONAL SUPPORT SERVICES

Charges for these Services are found in Appendix D.

Definitions

Customer Critical Problem: A problem for which the Government has no known work around resulting in a critical disruption in business operations.

Full Shift: 24 hours a day, seven days a week, including national holidays.

Off Shift: All hours outside of Prime Shift.

Prime Shift: 8 am to 5 pm in the local time zone where service is received, Monday through Friday (excluding holidays).

Enterprise: Is the Department or Agency under contract for Enterprise Support Services.

Supported Products - products and system environments. The Supported Product list is located on IBM's Internet address <http://www.ibm.com.services/sl/products, or as otherwise provided by IBM>. The Supported Product List will identify the products and system environments within specified support groups that are eligible for this Service. The Supported Product List will

change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

Delivery Orders will only be accepted for products up to and including the product's currency end date. Should products be withdrawn during the fiscal year in which a delivery order has already been received by IBM, the Product will continue to be supported until the end of the fiscal year. Renewal orders will not be accepted once a product has been withdrawn, or has reached its end of currency date.

7.29.1 SUPPORT LINE

Service Description

Support Line offers the Government remote assistance with operation of supported products and system environments. In addition, the Government may order certain optional features which are enhancements to this Service. These terms also apply for each of these optional features unless IBM specifies otherwise.

Definitions

Customer Critical Problem means a problem for which you have no known work around resulting in a critical disruption in your business operations.

Full Shift means 24 hours a day, seven days a week, including national holidays.

Off Shift means all hours outside of Prime Shift.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

Supported Products means those products and system environments identified in the Supported Products List for your support groups located at IBM's Internet address <http://www.ibm.com/services/sl/products>, or as otherwise provided by IBM. The Supported Products List will change periodically to reflect Supported Product additions (for example, adding new products) or deletions (for example, deleting products at their end of currency date).

IBM's Responsibilities

IBM will provide the Government remote assistance (via telephone from our support center or via an electronic search and questioning capability) in response to the Government's requests pertaining to the following:

For all Supported Products in the Government's covered support groups:

1. Basic, short duration installation, usage and configuration questions;
2. Questions regarding IBM Supported Product publications

For all IBM Software Supported Products in the Government's covered support groups:

1. Code-related problem questions;
2. Diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and

3. For known defects, available corrective service information and program fixes which the Government is entitled to receive under the terms of the IBM license.

When the Government reports a problem with covered non-IBM products on the Supported Product List, IBM will assist in isolating the problem cause and providing recovery information, if available, from the vendor. IBM will provide corrective service information and program fixes, if available and which IBM has the authorization to provide, for known defects. If a new (unknown) defect is identified, IBM will report it to the appropriate vendor and notify the Government of the action taken. At this point IBM will consider its support requirement fulfilled. Resolution of these problems is the responsibility of the vendor.

For the Linux support groups, IBM may make available new fixes to the Red Hat and SUSE Enterprise releases of the Linux operating system open source components for IBM supported Linux distributions. IBM may make available emergency source code fixes as new defects are reported. IBM is not a Linux distributor and does not distribute patches, maintenance updates or refreshes. You must receive maintenance updates and refreshes directly from the Linux distributor under the terms of their license. IBM will make these new source code fixes available to the Linux distributor and the open source maintainer for inclusion and distribution as errata updates and patches. IBM will support and maintain these new source code fixes until such time that the Linux distributor or open source maintainer incorporates them or develops an alternate fix and distributes as errata update or patch. At such point IBM will consider its support requirement fulfilled.

Using the Service

Response Criteria

If not initially answered by a Service technician, IBM will use commercially reasonable efforts to respond, by telephone, to Support Line Service calls from the Government within two hours during Prime Shift. IBM's initial response may result in resolution of the request or it will form the basis for determining that additional actions may be required to achieve technical resolution of the request. If you select Full Shift coverage or Hourly Out-of-Scope support, during Off Shift IBM will use commercially reasonable efforts to respond to Service calls which the Government specifies to be Customer Critical Problems within two hours and all other Service calls within four hours.

Electronic Support

The Government will also be able to electronically submit Support Line Service requests for Supported Products, provided the Government has Internet access. IBM will use commercially reasonable efforts to respond to each electronic Service request from the Government within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, IBM will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

Government's Responsibilities

The Government agrees to:

1. Ensure all software Supported Products for which assistance is requested are properly licensed and have a current subscription (where required) for the Supported products for which you request assistance;



2. Retrieve and review a current Supported Product List on a regular basis to verify additions or deletions within the Government's covered support groups;
3. Provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems the Government requests assistance with;
4. If necessary, provide IBM with appropriate remote access to the Government's system to assist in isolating the software problem cause. The Government will remain responsible for adequately protecting the system and all data contained therein whenever IBM remotely accesses it with the Government's permission.
5. Provide IBM with written notice, within one-month, when making any changes to the Government's machine inventory that would affect this Service. Such changes may cause a revision to your charges for this service.(Note: This responsibility does not apply for Enterprise Support);
6. Designate a technically qualified representative (called 'Primary Technical Contact") who will be the Government's focal point to whom we may direct general technical information pertaining to the Government's Supported Products. The Primary Technical Contact and each caller must have sufficient technical knowledge of the Government's Supported Product environment to enable effective communication with our support center.

Procurement

Enterprise Support: the Government may select support for all Supported Products that are part of the Government's system environment. The Government will provide an initial inventory of Supported Products, including the machines on which they are installed, and inform IBM of inventory changes (additions/removals) prior to each fiscal year renewal. The Government's machine and Supported Product install base at the start of each contract year will be used to determine charges for that year.

Charges for this option are calculated by taking into account the Supported Product install base, and the total amount is uplifted by 5%. Charges for coverage are established at the beginning of the term/renewal period and remains fixed through September 30 of each year. Each fiscal year thereafter the Government's charges are reset, taking into account the additions and deletions of supported products or platforms that occurred during the prior fiscal year. Additional charges will occur during the year if the Government chooses to add Optional Features, Full-Shift coverage, or Account Advocate.

Linux Product Subscription Option

For Supported Products in the Linux support group, you may also order this subscription option as an added Support Line Service feature. Under this feature, IBM will assist you in the ordering and receipt of eligible Linux subscription products. You and IBM will each identify a subscription coordinator who will be their focal point for all your Linux supplier-licensed subscription product orders and deliveries under this Support Line Service feature.

The Linux supplier-licensed software is directly distributed and licensed to you by the Linux supplier under the terms and conditions of the supplier's end user license agreement ("EULA"). While IBM may have placed the order with supplier for the supplier-licensed software on your behalf, as a convenience for you, you acknowledge and understand that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the Linux supplier-licensed software. While

the Linux supplier may provide you with certain warranties, representations, or indemnities under the EULA, IBM is not providing, whether express or implied, any warranty, representation, indemnity, or other license with respect to the Linux supplier-licensed software and is merely providing Services under this agreement on your behalf at your request. Without limiting the generality of the foregoing, IBM is providing no indemnity for any claim or alleged claim that all or any portion of the Linux supplier-licensed software may infringe a third party's intellectual property right.

Termination/Withdrawal

The Government may terminate a Support Line service or optional feature on one month's written notice after it has been covered under the Service for at least three months. Should the Government be dissatisfied with the Operational Support Service within 30 days after its effective date, the Government may terminate the service without a penalty.

Should the Government terminate service during the first fiscal year after initially acquiring the service, except as otherwise stated above, the Government is required to pay IBM a termination charge equal to the amount of payments remaining until the end of the fiscal year. The Government may not terminate Support Line if the Government has elected to continue feature support.

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

IBM may withdraw Service for a support group on the Supported Products List on three months' notice to the Government. Other changes to the Supported Products List (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Support Products List at <http://www.ibm.com/services/sl/products> as they occur. Renewal orders will not be accepted once a product has been withdrawn, or has reached its end of currency. The Government agrees to pay IBM for all Services IBM provides and any Materials IBM delivers through Service termination.

7.29.2 IBM SOFTWARE SUPPORT SERVICES – ACCOUNT ADVOCATE

IBM Software Support Services – premium support - account advocate support comprises three Enhanced Service Modules: Priority Access, Priority Response, and Priority Handling, that will provide you with premium remote voice and electronic entry into and handling within IBM's product support structure. This Service also enhances your support under your ("Base Support Contracts") and provides a single point of entry into IBM's support structure for reporting problems relating to your Eligible Machines and Programs. This Service also enhances your access to a Priority Support Team which includes an Account Advocate.

You must maintain Base Support Contracts for all Eligible Machines/Programs for which you select this coverage. This service description details the support enhancements (above your Base Support Contracts) to which you are entitled for your covered Eligible Machines/Products. Unless changed in this service description, the provisions of all the Base Support Contracts remain in effect.

This specific Service is intended for Machines physically located within the United States. This service description details the support enhancements (above your Base Support Contracts) to which you are entitled for your Account Advocate Eligible Machines/Programs.

This service description is structured that general account advocate terms are set out in the main body of the text and product unique Account Advocate terms are set out later in the text by product group. Only those activities specified in this service description are included with the account advocate service; other tasks for which you request support will be contracted separately for an additional charge.

Definitions

Base Support Contracts – is **IBM Support Line, IBM Software Maintenance for OS/400, I5/OS and Selected Products, IBM Software Maintenance for AIX Operating Systems, IBM Passport Advantage, IBM Hardware Maintenance and IBM ServicePac.**

Account Advocate **is a member of the Priority Support Team that is responsible for ensuring the provision of all aspects of the Account Advocate Service outline under this Service;**

Eligible Machines/Programs are those IBM software and hardware products eligible for this Service as identified at IBM's Internet address <http://www-1.ibm.com/services/sl/products/> or listed in your IBM schedule of services. When accessing internet address, refer to the enhanced technical support Service for Eligible Machines/Programs.

Eligible Machines/Programs are grouped by Operating System (OS) and the Server types on which the OS is installed.

The following is a list of Eligible Machines/Programs for the designated eligible OS:

AIX/OS400/i5OS - IBM System i5, IBM Server iSeries, IBM System p5, and IBM Server pSeries

Linux - IBM System i5, IBM Server iSeries, IBM Server pSeries, IBM System p5, IBM Server xSeries, IBM System x3, and x86 based OEM

Microsoft - IBM Server xSeries, IBM System x3, and x86 based OEM

Enhanced Service Modules means collectively Priority Access, Priority Response and Priority Handling.

Off Shift means all hours outside of Prime Shift.

Periodic Service Status Update means a mutually agreed to scheduled conference call between your Point of Contact and the assigned Account Advocate.

Primary Technical Contact (PTC) is your representative to whom IBM may direct general technical information pertaining to the Services. The PTC must have sufficient technical knowledge of Eligible Programs and Eligible Machines environment to enable effective communication with IBM's Support Center.

Prime Shift means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding national holidays).

Priority Access means the process by which you report problems to the Priority Support Team relating to your Eligible Programs/Products and other associated IBM products for which you maintain a current IBM support contract.

Priority Handling means for those covered Eligible Programs/Products the Priority Support Team will engage and coordinate all the appropriate resources to resolve your reported problems.

Priority Response means IBM base support response time commitments are enhanced under this Service.

Priority Support Team means IBM's team of personnel that will provide a single point of entry for your voice and electronic queries in support of the Enhanced Service Modules under this Service.

Response Time means the elapsed time between receipt by the Priority Support Team of a problem submission, and the acknowledgement of the submission. IBM's initial response may result in technical resolution of your problem or it may form the basis for determining what additional actions are required. Refer to the IBM Software Support Handbook for call handling process by severity at: <http://techsupport.services.ibm.com/guides/beforecontacting.html>

Server location – is all eligible machines must be physically located within the United States.

Service Modules means collectively Priority Access, Priority Response and Priority Handling Service modules define what your remote support service will provide.

IBM Responsibilities

Service Modules – Priority Access

IBM will provide an Account Advocate who is a member of the Priority Support Team and who will work with your designated Point of Contact (“POC”) to establish and maintain a framework for technical communications and contractual activities.

The Account Advocate will:

1. review the Services contract and any other applicable documentation as part of a welcome call;
2. review your Eligible Programs/Products under the Service;
3. review the primary escalation path for your Eligible Programs/Products; and
4. schedule Periodic Service Status Update calls with your designated POC.

Enhanced Service Modules

Priority Access

IBM will provide you with direct access to a team of skilled resources known as the Priority Support Team who will provide an initial point of contact for your problem submissions related to your Eligible Machines/Programs and other IBM products associated with servers for which you have purchased support under this Service. You may submit problem management records (via remote voice or electronic problem reporting). Your remote voice response support is achieved using your Direct Access Code (“DAC”) when you submit a problem. If the problem is related to an Eligible Program(s) installed on a machine for which you have purchased support under this Service, you will receive Priority Handling as set out below. If the reported problem is related to another IBM software or hardware product associated with a server for which you have purchased support under this Service, the Priority Support Team will engage the appropriate specialist team on your behalf. This engagement requires that you have a valid

support contract for that IBM product. Once the specialist support team for that product is engaged, service will be provided under the terms and conditions of that contract (not this Account Advocate Service).

Priority Response

Your problem submissions to the Priority Support Team for Eligible Machines/Programs will receive enhanced Response Times as detailed below. These Response Times detail how quickly the Priority Support team will respond based on the Severity of the problem and the time that you report it. IBM's initial response may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. Response Times for Off Shift problem submissions are only valid if you have contracted for coverage during Off Shift.

For telephone assistance:

- Severity ("Sev") 1 Calls – Thirty (30) minutes Response Time during Prime Shift and thirty (30) minutes during Off Shift. Exception: for Microsoft products, Off-Shift response time is sixty (60) minutes.
 - Sev 1 Calls are defined as a system down situation. Customer is unable to use the product which has a critical impact on operations. No backup is available.
- Sev 2 Calls – One (1) hour Response Time during Prime Shift and two (2) hours during Off Shift.
 - Sev 2 Calls are defined as customer is able to use the product, but operations are severely restricted by the problem.
- Sev 3 & Sev 4 Calls – Two (2) hours Response Time during Prime Shift and four (4) hours during Off Shift.
 - Sev 3 Calls are defined as customer is able to use the product with some restrictions on the function that is available. These restrictions do have an impact on overall operation.
 - Sev 4 Calls are defined as problems that cause little or no impact to the operations. A way to circumvent the problem has been found.

For electronic assistance:

- All Sev levels - Two (2) hour Response Time for submissions received during Prime Shift. For submissions received during Off Shift, Response Time is within two (2) hours after the start of Prime Shift on the next business day. IBM is not responsible for delays caused by systems and network problems.

IBM will use commercially reasonable efforts to achieve the Response Time objectives set out above. However, IBM's failure to do so will not constitute a breach, material or otherwise, will not result in IBM being liable for damages, service level credits or other amounts, and will not otherwise provide any additional rights to you.

Priority Handling

The Priority Support Team will provide priority handling of your reported problems related to Eligible Machines/Programs on servers for which you have contracted this Service. The Priority Support team will:

1. perform initial problem determination and problem source identification;
2. engage the appropriate specialist support resources when required;
3. monitor the progress of your problem submissions for Eligible Machines/Programs;
4. coordinate service resources as necessary; and
5. ensure provision of follow-up status that is appropriate to the severity level assigned to the submitted problem. This includes invoking IBM's predefined escalation guidelines until the problem is resolved. Target status update intervals are as follows--
 - Sev 1: Follow up with the customer every four (4) hours, or as mutually agreed.
 - Sev 2: Follow up with the customer (during Prime Shift) daily or as mutually agreed.
 - Sev 3 and Sev 4: Follow up with the customer (during Prime Shift) when progress has been made.

Your Responsibilities

You agree to:

1. maintain, for the duration of this Service, the appropriate base support contracts (including coverage hours) for all Eligible Programs/Products to be covered by this Service. If you terminate any of your base support contracts (or change the coverage hours), you must immediately notify the IBM Account Advocate who will help to determine the appropriate changes to your coverage under this Service;
2. designate a Point of Contact (POC) who will be the focal point for all communication with IBM's Account Advocate relative to this Service and who will have the authority to act on your behalf in matters regarding this Service. Your POC will--
 - a. inform the IBM Account Advocate of any hardware or software changes to your Eligible Programs/Products environment within thirty (30) days of the change occurring. Failure to provide timely updates may result in Service delays or lack of coverage, and
 - b. designate a contact that will be the focal point for problem submissions by you to the Priority Support Team;
3. obtain and provide information, data, decisions and approvals, within three (3) business days of IBM's request, unless both parties mutually agree to an extended response time;
4. ensure the appropriate personnel for activities, described in this Service, are made available by your organization. This includes your being able to help resolve issues via escalation within your organization;
5. review on a regular basis, the product listings at <http://www-1.ibm.com/services/sl/products/> to determine whether there have been any additions or deletions (for example, products removed at their end of currency date) that may impact the product support you are receiving under this Service. Questions regarding such changes should be directed to your Account Advocate; and
6. supply your DAC code in order to receive support on your Eligible Programs/Products.

Termination

You may terminate this Service on one month written notice to IBM after the initial contract year. Termination of this Service does not terminate or modify any of your base support contracts. Since this Service requires you to have base support contracts in place for all IBM



Eligible Programs/Products to be covered by this Service, you may not terminate the associated base support contract during the initial contract year; thereafter, if you terminate the associated base support contract, you must also terminate the applicable Account Advocate Service support.