

# **IBM International Program License Agreement**

## **Amendment for iSeries and pSeries Software On/Off Capacity on Demand**

The terms of this IBM Amendment for iSeries and pSeries Software On/Off Capacity on Demand ("Capacity on Demand") modify or are in addition to the IBM International Program License Agreement ("IPLA") and govern IBM's provision to you, on a temporary use basis, of selected IBM Programs ("Eligible Programs"). If there is a conflict between the terms of this amendment and those of the IPLA (which may be found at <http://www.ibm.com/software/sla/>), those of this amendment prevail. You accept the terms of this amendment by signing below, ordering Eligible Programs or by making any payment for Eligible Programs under this amendment.

### **1. Definitions**

<b>Machine</b>	a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them.
<b>TCOD Machine</b>	an IBM Machine that supports Temporary Capacity On Demand ("TCOD") (which may also be referred to in IBM literature or otherwise known as "On/Off Capacity on Demand," "On/Off CoD," "On/Off Capacity Upgrade on Demand," or "On/Off CUoD") and for which IBM offers TCOD features.
<b>On-Demand Capacity</b>	amount of resources, e.g., processors, storage, memory, channel, installed on a TCOD Machine but not enabled for use (e.g., On-Demand Processors).
<b>Activation / Activated / Activate</b>	enabling On-Demand Capacity for use.
<b>Temporary Capacity</b>	On-Demand Capacity that may be temporarily Activated.
<b>Hardware Use Report</b>	a report generated by operating system management products, System Console for iSeries and HMC Console for pSeries, that captures Temporary Capacity use Activated on a TCOD Machine. You are required to submit the report to IBM within 30 days of the end of each calendar quarter.
<b>License Management Program</b>	an IBM Program that records and reports Program use of selected IBM Programs installed on a Machine. IBM plans to implement license use management for selected Programs at a future date.
<b>License Management Report</b>	a report generated by the License Management Program. You will be required to periodically submit the report to IBM when the License Management Program becomes available.
<b>On/Off CoD Software Charges</b>	charges for selected IBM Programs, as announced by IBM, running on a TCOD Machine(s) that result from the use of Temporary Capacity of that TCOD Machine.
<b>TCOD Billing Quarter</b>	a calendar quarter for which your Activation of Temporary Capacity On Demand is monitored and software inventory reported for billing purposes.
<b>TCOD Enablement Feature</b>	a feature offered by IBM, which authorizes you to use Temporary Capacity On Demand.

### **2. Resellers of Capacity on Demand**

When you order "Capacity on Demand" under this amendment from a reseller, IBM is not responsible for 1) the actions of the reseller, 2) any additional obligations the reseller may have to you, or 3) any products or services that

This amendment and IBM International Program License Agreement are the complete agreement between us and replace any prior oral or written communications concerning iSeries and pSeries Software On/Off Capacity on Demand. By signing below, each of us agrees to the terms of the amendment without modification. Once signed, 1) unless prohibited by applicable law or specified otherwise, any reproduction of this amendment made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all iSeries and pSeries Software On/Off Capacity on Demand provided under this amendment is subject to it.

Agreed to: (Type customer name below)

Agreed to: (Type IBM Company name below)

By \_\_\_\_\_  
Authorized Signature

By \_\_\_\_\_  
Authorized Signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer number:

Agreement number:

Customer address:

IBM address:

After signing please return a copy of this amendment to the local "IBM address" shown above.

the reseller may supply to you under the reseller's agreements. When you obtain Eligible Programs or software maintenance from your reseller, your reseller sets the charges and payment terms.

### **3. Charges**

1. On/Off CoD Software Charges are based on the use of Temporary Capacity during a contiguous 24-hour period in which the Temporary Capacity is Activated on a TCOD Machine.
2. On/Off CoD Software Charges apply to Programs eligible for On/Off CoD Software Charges when Temporary Capacity is Activated on a TCOD Machine. Standard charges apply to Programs ineligible for On/Off Software Charges when Temporary Capacity is Activated on a TCOD Machine.
3. If you have IBM software maintenance for Programs with On/Off CoD Software Charges, activation of Temporary Capacity will not result in increased software maintenance charges.
4. Programs provided under On/Off CoD Software Charges may not be combined with volume pricing discounts or no-charge complementary or trial offerings that provide Temporary Capacity capability.
5. On/Off CoD Software Charges do not accrue against One-Time Charges (OTC).
6. Only additional authorizations to use a Program on a specific Machine are eligible for On/Off CoD Software Charges, i.e., the initial authorization(s) to use must be acquired at standard OTC pricing.

### **4. IBM's Responsibilities**

IBM will

1. Provide the License Management Program, when available.
2. Specify the license use management reporting requirements and the e-mail address for transmitting License Management Reports to IBM, when available.

### **5. Your Responsibilities**

You agree

1. to install IBM's License Management Program within six months of availability.
2. to use the IBM License Management Program to report Eligible Program use and send to IBM the License Management Report within the reporting period to be specified.
3. that when you acquire an IBM Program with On/Off CoD Software Charges for a TCOD Machine with a TCOD Enablement Feature, you will submit to IBM no later than 30 days following the end of the current TCOD Billing Quarter
  - (a) (1) your inventory of IPLA Programs in use on the TCOD Machine, including Program part numbers, Program description and associated Machine serial number and (2) your Hardware Use Report from your pSeries TCOD Machine. You will send this information to the following e-mail address: [ooocod\\_usage@lotus.com](mailto:ooocod_usage@lotus.com).
  - (b) an order, or have your designated reseller submit on your behalf, as applicable, for On/Off CoD Software Charges for each Program in a quantity equal to the number of days Temporary Capacity was Activated during that TCOD Billing Quarter.

You authorize IBM to place this order on your behalf, and bill you for the order at IBM's then current price, if you or your designated reseller fails to do so. A "blanket" Purchase Order for the year will not be established for On/Off CoD Software Charges, or other IBM Program Charges, and is not required.
4. to pay the invoice for On/Off CoD Software Charges submitted by IBM or your reseller, as applicable, per the terms of this amendment on a calendar quarter basis, based, until you have installed the License Management Program, on the software inventory and Hardware Use Reports submitted, and thereafter, on the License Management Reports that you submit. If you do not submit the software inventory or Hardware Use Reports or License Management Reports, as applicable, within the specified reporting period, charges will be based on the assumption that 100% of Temporary Capacity was Activated during the TCOD Billing Quarter.

IBM reserves the right to change the process by which your inventory of IPLA Programs with On/Off CoD Software Charges and hardware use is reported. You agree to implement any such changes, as necessary.

### **6. Termination**

1. Either of us may terminate this amendment if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.
2. You may terminate this amendment on one month's written notice to IBM or your reseller, as applicable.
3. Upon termination of this amendment, you must either discontinue the use of all Programs subject to this amendment or immediately pay to IBM or your reseller, as applicable, the standard OTC for each Program you wish to use.

### **7. General Terms**

Both of us agree that:

1. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
2. any terms of this amendment which by their nature extend beyond the amendment termination remain in effect until fulfilled, and apply to both of our respective successors and assignees;

3. you may not assign this amendment, in whole or in part, without the prior written consent of IBM, which will not be unreasonably withheld. Any attempt to do so is void. However, the assignment of this amendment within the enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other;
4. this amendment will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as permitted by the Limitation of Liability section of the IPLA for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable; and
5. IBM may change the terms of this amendment by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders of Capacity on Demand. Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.