



Master Services Attachment for ServiceElite

1. Scope of Services

IBM will provide you Services as described in this Attachment and, if applicable, its Statements of Work and Change Authorizations to support your hardware and software products (called “Eligible Machines”, “Eligible Programs”, and together “Eligible Products”). Services are available for Eligible Products normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

IBM will identify the Eligible Products, the Services that apply to them, and the Services transaction contract period in Schedules that reference this Attachment and any associated Statements of Work and Change Authorizations. Each Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

The specific terms regarding Eligible Machine Services and Eligible Program Services contained in this Attachment and its Statements of Work and Change Authorizations apply only when you have contracted for an associated Eligible Machine maintenance Service or Eligible Program support Service as specified in a Schedule.

2. Sales through IBM and IBM Business Partners

You may acquire Services through IBM or an IBM Business Partner, or their designee, authorized to resell IBM Services. IBM Business Partners establish the price and general business terms at which they market the IBM Services to you and they will communicate these directly to you for all transactions they initiate with you. However, IBM establishes the terms of each Service IBM provides and our general business responsibilities associated with these Services. Therefore, IBM will provide the Services as described in this Attachment and its associated Statements of Work and Change Authorizations (and their Schedules).

Whenever IBM is required to provide notification to you or you are required to provide notification to IBM, each of us also agrees to notify the applicable IBM Business Partner if one is engaged in the transaction.

In the event that you have contracted through an IBM Business Partner that is no longer able to offer IBM Services for any reason, IBM will so notify you in writing. You may continue to receive the Services by instructing IBM (in writing) to transfer administration of the Services to either 1) another IBM Business Partner of your choice (who may require you to first execute one of their agreements) that is approved to offer you IBM Services, or 2) IBM under a standard direct marketing relationship that enables IBM to generate charges and invoicing.

IBM is not responsible for 1) any actions of IBM Business Partners or their designees, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

3. IBM Responsibilities

When you contract for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or an associated Statement of Work or Change Authorization.

4. Your Responsibilities

When you contract for an applicable Service, you agree:

1. to provide IBM with an inventory in which you identify all Eligible Products to be covered at each Specified Location and to notify IBM whenever you move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. that when an applicable Service includes IBM providing you with access codes to electronic diagnostic tools, information databases, or other Service delivery facilities, you will limit the use of these to only those who are authorized to use them under your control and only in support of Eligible Products and Services identified in Schedules;
3. to provide IBM with the necessary information it requests to perform Services which are related to its provision of the Services to you and to notify IBM of any changes;
4. to pay any communications charges associated with accessing these Services including but not limited to phone and internet connection charges, unless IBM specifies otherwise in writing;
5. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise;

6. to securely erase from any Machine that you return to IBM for any reason all programs not provided by IBM with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data") and 2) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g. by making it anonymous or encrypting it) so that it no longer qualifies as Personal Data under applicable law. You also agree to remove all monetary funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that you return to IBM. You acknowledge that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world, and you authorize IBM to do so;
7. to acknowledge that Services will be performed on-site at your location, and off-site at IBM location(s). You also understand and acknowledge that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
8. to acknowledge that some devices (for example, solid state storage devices) have read/write or wear limitations as documented in the hardware product specifications. When these devices have reached the wear limitations, they are not covered under maintenance Services under which IBM agrees to provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the device by description and/or part number and describes the terms of support or maintenance coverage applicable to it;
9. if making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals;
10. to provide IBM with safe access (including remote access) to your facilities, systems, information, and resources, all at no charge to IBM;
11. where applicable, before IBM provides Services, to follow the service request procedures that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM web site or copied from other electronic media); and
12. you cannot sell or resell Services or transfer Services to another Machine.

5. Mutual Responsibilities

Each of us will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export of certain uses or to certain end users, and each of us will cooperate with the other by providing all necessary information to the other, as needed for compliance. Each of us shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

6. Automatic Inventory Increase for Machine and Software Maintenance Services

If specified as a selected option in the Schedule, IBM will automatically increase the inventory count and associated Services at Specified Locations per the terms set out below.

OPTION #1 - MACHINE MAINTENANCE SERVICES

IBM will automatically increase the inventory count and associated Machine maintenance Services whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start will remain outside the scope of this Section unless you request IBM add them during the transaction contract period. However, all Eligible IBM Machines added to your inventory during the transaction contract period will be included in the inventory count and receive maintenance Services as set out in this Section.
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type at the Specified Location, unless agreed upon in writing by both parties.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

OPTION #2 - SOFTWARE SERVICES

IBM will automatically increase the inventory count and associated software Services whenever an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. The software maintenance Services that apply for these programs will be the same as that which you are receiving for all other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

These software Services will commence immediately upon addition of the Eligible Program to the inventory except that for software maintenance Services, a) if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence at the expiration date of that support period, or b) if the Program is not covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence immediately and After License Fees may apply.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

7. Charges and Payment

For sales through IBM, your charges are calculated taking into account your Service selections, price protection option, payment option, and for prepayments, length of the prepay period.

FOR EACH TRANSACTION PACKAGE YOU MAY SELECT ONE OF THE FOLLOWING 3 PRICE PROTECTION OPTIONS. YOUR SELECTION WILL BE SPECIFIED IN THE SCHEDULE ASSOCIATED WITH THAT TRANSACTION PACKAGE.

OPTION #1 ANNUAL - PRICE PROTECTION DURING EACH TRANSACTION CONTRACT YEAR ONLY

IBM may revise charges. However, any rate increase will not take effect until the next yearly anniversary of the start of the transaction contract period. At the start of each transaction contract year, you will be invoiced at the charge rates that are then in effect and that invoice will serve as your notice of charge rate changes.

All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at the previous yearly anniversary of the start of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date.

OPTION #2 FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. You will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

OPTION #3 PREPAY - PRICE PROTECTION FOR TRANSACTION CONTRACT PERIOD PREPAY

Since you have selected to prepay for the entire transaction contract period, you will not be subject to increases in charges (during that period) for included Eligible Product configurations and Services. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period will be added subject to the charge rate that applied on their initial availability date with adjustment for the reduced prepay period. If you elect to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), you must provide IBM written notification (at least one

month prior to the start of the renewal period) and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle under the terms set out for Option #1 above.

FOR EACH TRANSACTION PACKAGE, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting; or
2. a Specified Location is affected by a change that results in additional costs (e.g. a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

For sales through IBM Business Partners, your IBM Business Partner sets the charges and terms governing charges. Your IBM Business Partner may impose an additional charge for some actions (e.g. termination), or for IBM's provision of some additional services (e.g. Service upgrades). These actions or additional services are identified in this Attachment and its associated Statements of Work and Change Authorizations with an asterisk ("**"). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge or may be entitled to a credit or refund. You will make payment directly to your IBM Business Partner.

IBM may charge you directly for certain expenses IBM incurs in performance of a Service for you (e.g. actual travel and living expenses, out-of-pocket expenses). IBM will not incur these expenses without your prior written approval.

8. Renewal and Termination

IBM will automatically renew Services unless you or your IBM Business Partner request otherwise. For each transaction the Schedule will specify the number of years (0 or greater) in the Renewal Contract Period. Whenever this number is greater than 0, IBM will renew the applicable Services at the end of the transaction contract period for the number of years specified. Thereafter, IBM will automatically renew the Services for same length periods unless you or your IBM Business Partner notify IBM in advance of your desire to change the length of the renewal. You, your IBM Business Partner, or IBM can select not to renew by providing written notification (at least one month prior to the end of the current transaction contract period) to the others of its decision not to renew. Nonrenewal notification sent to you by IBM or received by IBM from either you or your IBM Business Partner will result in IBM ceasing to provide you the applicable Services at the end of the current transaction contract period.

In the case of renewals, charges are recalculated at the start of each renewal period. For sales through IBM, the new charges will be based on the length of the Renewal Contract Period and then current charges associated with your contracted a) Services, b) price protection option, and c) payment option.

One of the following termination provisions will apply based on the length of the transaction contract period specified in the Schedule.

PROVISION #1 - ONE YEAR TRANSACTION CONTRACT PERIOD

You may terminate Services for an Eligible Product, on 60 days written notice to IBM, if you permanently remove it from productive use within your Enterprise. Otherwise, Services must be under contract for at least one year. If you select automatic renewals, you may also terminate Services after the first full year of Service by providing IBM 60 days written notice prior to the end of your first year of Service. You will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.* You may also terminate Services by providing IBM 60 days written notice, after the Services have been under contract for at least one year. You will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.*

PROVISION #2 - MULTI-YEAR TRANSACTION CONTRACT PERIOD

You have committed to continue Services for the entire transaction contract period. However, you may terminate Services for an Eligible Product, on 60 days written notice to IBM, if you permanently remove it from productive use within your Enterprise. Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing IBM 60 days written notice and paying an adjustment fee equal to the charges for a number of months equal to the number of years in the Transaction Contract Period.* However, the Services must have been under contract for at least one year upon termination. After allowing for applicable adjustments, you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.*

9. Services

Warranty Service Upgrade

For certain Eligible Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM provides Service for Machines as described in our Agreement but charges for the upgrade in type of Service during the warranty period.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of your standard inventory count and will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

Maintenance of IBM Machines

IBM will provide Service for Machines, for those Eligible IBM Machines specified in the Schedule.

Certain Machine types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution.

A machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. All Eligible Machines must be in good working order. For more details contact your sales representative.

Replacements

Service for some IBM Machines involves IBM providing you with an exchange replacement for installation by you. Such exchange replacements may be i) a part of a Machine (called a Client Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. You may request IBM to install the replacement CRU or Machine, however, you may be charged for the installation. When return is required, you may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of your receipt of the replacement.

Coverage

Services do not cover improperly maintained or damaged Machines, Machines with altered identification labels, alterations, accessories, supply items, consumables (such as batteries and printer cartridges), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible.

Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). You agree to provide actual usage data as described in the Schedule. If you make changes to your environment that impact usage charges (for example, change authorized capacity for Machines or change processor size or configuration for Programs), you agree to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

If your warranty or maintenance Service coverage lapses for a Machine by 90 days or more beyond the end of the contracted warranty or maintenance coverage period, and you subsequently request to restart your Service coverage, a Re-establishment Fee will be applied. The fee is based on the number of days of lapsed coverage, up to an amount equal to 365 days of the applicable hardware maintenance service fees for the specific Machine(s). The Machine(s) must meet IBM's safety and serviceability requirements from the date of Service coverage. IBM reserves the right to inspect the Machines within one month from the start of Service. Where Machine(s) do not meet IBM's safety and serviceability requirements, you agree to pay for any repairs deemed necessary by IBM prior to IBM accepting the applicable Machine for ongoing Service coverage.

Maintenance of Non-IBM Machines

IBM will provide Service for Machines, as described in our Agreement, for those Eligible non-IBM Machines specified in the Schedule. Unless specified otherwise in the Schedule, Service is provided only for the manufacturer's base configuration for each covered Machine model. You are responsible for following the manufacturer's and IBM's provided guidelines pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request.

Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that IBM use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge for these parts.*

In addition to items set forth in the Agreement, IBM's support does not cover:

1. Machine installation, engineering change activity, or preventive maintenance;
2. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
3. service of microcode or firmware; or
4. service of features, parts, or devices not supplied by either a) the Machine's original manufacturer or b) IBM during the performance of this Service.

Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or lack of original manufacturer technical support.

Eligible non-IBM Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in an acceptable condition for Service, IBM will notify you and terminate coverage for the inspected machine.

You agree to provide IBM 60 days written notice prior to terminating coverage for a Machine being permanently removed from productive use within your Enterprise. You will receive a prorated credit for any remaining prepaid period associated with the terminated coverage unless indicated otherwise in the transaction document.

IBM Software Maintenance

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 support under this Service, should any be made available. Information on ordering versions, releases or updates can be found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss>, and selecting the Entitled Software Update ("ESU") 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 8:00 a.m. to 5:00 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 <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html> for details. A 24x7 (every day of the year) all severity option may be available for an 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 available and 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. If you decline providing remote access to your system by IBM, IBM may be limited in its ability to fully provide the Services necessary to resolve the problem and if IBM is unable to do so, IBM will notify you and close out the service call.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Eligible Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.
6. This Service is provided solely for Eligible Programs that are located within the United States. For calls that originate from outside of the United States: a) toll free telephone access is not available, b) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your United States Eligible Programs are

installed, Monday through Friday (excluding national holidays), c) replies or other return communication to the caller will be via a United States telephone number provided by you or electronic means only, d) software “traps” or other tools that may be necessary to diagnose problems will be sent only to the United States Eligible Programs location, e) the diagnosis and repair of data encryption will be discussed only with personnel at the United States Eligible Programs location, and f) all support will be provided in the English language only.

Eligible Programs: Licensed programs for which this Service is available are listed at: www.ibm.com/services/supline/products/ or may be obtained from your IBM 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 of Eligible Programs. It is your responsibility to ensure that, when calling in for service, your Eligible Programs are 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.

Optional Feature Support

In addition to your purchase of IBM Maintenance for selected IBM products and/or Software Maintenance for your AIX Operating System and selected License Program Products, you may purchase IBM's Support via USA Citizens for software or Support via USA Citizens for hardware feature. This feature provides standard IBM remote hardware and software support delivered and managed exclusively by USA Citizens who are located in the continental United States. IBM Support via USA Citizens is available via voice support during prime shift only for software. Your hardware support will be 24x7. Each time you call IBM, this feature's process will be engaged only after you identify yourself as a Support via USA Citizens customer and IBM verifies your entitlement for this feature. Your hardware error data for analysis and call data will be managed by USA Citizens only.

Machine Control Program Remote Support

This remote support Service is provided only for Machine Control Programs. The term “Machine Control Program” (“MCP”) means code delivered with an IBM Machine that executes below the external user interface (e.g. is implemented in a part of storage that is not addressable by user programs).

IBM will provide you remote assistance (via telephone from IBM's support center or via electronic access) in response to your routine installation, configuration, and usage (how-to) questions pertaining to MCPs on your covered IBM Machines. This assistance is provided during normal business hours (8:00 a.m. to 5:00 p.m. in the local time zone where you receive the Service, Monday through Friday, excluding national holidays). For an additional charge*, you may upgrade your Service hours of coverage to 24 x 7.

Remote Support does not include assistance for 1) the design and development of code, 2) your use of a MCP in other than its specified operating environment, 3) use on other than the specified machine, or 4) failures caused by products for which IBM is not responsible under this Service. This Service does not include on-site assistance at your location.

This 1) Attachment, 2) its applicable Transaction Documents (e.g. Statements of Work, Change Authorizations and Schedules), and 3) the Client Relationship Agreement (or an equivalent agreement in effect between us) identified below ("Agreement") comprise the complete agreement regarding the Services described in this Attachment and its applicable Transaction Documents and replace any prior oral or written communications between you and IBM. Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

As used in this Attachment, "you" and "your" refer to the transaction contracting entity that is part of the Enterprise identified below.

Agreed to:

By _____

Authorized signature

Name (type or print):

Date:

Enterprise number:

Enterprise address:

Agreed to:

International Business Machines Corporation

By _____

Authorized signature

Name (type or print):

Date:

Reference Agreement number:

Attachment number:

IBM address: