

## 1. Services

IBM will provide Services, as described in this Attachment and Statements of Work (SOW), Schedules, and Change Authorizations (collectively Transaction Documents or TDs), to support Client's Eligible Machines and Eligible Programs (collectively Eligible Products). This Attachment replaces all other previously accepted versions of this Attachment for all transactions, including renewals, dated as of the effective date of this Attachment.

IBM will identify Eligible Products, Specified Locations (entire information processing environment, or a portion thereof, at multiple sites or a single building), applicable Services, and the contract period, in TDs.

Eligible 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 acceptable condition for Service, IBM will restore it for a charge or Client may withdraw its request for maintenance Service.

Machine Maintenance is Service to keep Machines in, or restore them to, conformance with their official published specifications, and does not cover:

- a. improperly maintained or damaged Machines, Machines with altered identification labels, alterations, accessories;
- b. 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;
- c. Machine installation, engineering change activity, or preventive maintenance; or
- d. service of features, parts, or devices not supplied by the Machine's manufacturer, or IBM during the performance of Service.

IBM does not warrant uninterrupted or error-free operation or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

For acquisitions through an IBM Business Partner (BP) authorized to resell IBM Services, the BP establishes the price and general business terms at which they market IBM Services and communicates the terms for each BP transaction directly to Client. However, IBM establishes the terms of each Service IBM provides and will provide the Services as described in this Attachment and applicable TD. Whenever a party is required to provide notification to the other, each agrees to notify the applicable BP.

If a BP that Client has contracted through is no longer able to offer IBM Services, IBM will notify Client in writing. Client may continue to receive the Services by instructing IBM in writing to transfer administration of the Services to 1) another BP of Client's choice approved to offer IBM Services, or 2) IBM under a standard direct relationship where IBM invoices Client.

### 1.1 Warranty Service Upgrade (WSU)

During the warranty period for certain Eligible Machines, Client may select an upgrade to the standard warranty. WSU may not be terminated or transferred during the warranty period. When the warranty period ends, the Machine is added to maintenance at the Type of Service selected for WSU.

### 1.2 Maintenance of IBM Machines

IBM will provide maintenance of Eligible IBM Machines specified in the Schedule.

IBM may provide an exchange replacement for installation by Client. Replacements may be i) a part of a Machine (called a Client Replaceable Unit (CRU), e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. When a return is required, Client is charged for the replacement if IBM does not receive the replaced part within 15 calendar days of Client's receipt of the replacement. Client may request that IBM install the replacement as a billable installation.

#### 1.2.1 Hardware Support Extension

After IBM has announced End of Service for specified Machines, IBM may offer limited support, to include remote assistance, from IBM's support center or via electronic access, and on-site assistance, in response to Client requests for hardware support on the specified Machines that have reached End of Service (Hardware Support Extension). IBM neither warrants i) uninterrupted or error-free operation of this IBM Service or Machines covered hereunder; nor ii) that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to the Machines. On-site repair is subject to the availability of repair parts and skilled resources and does not include repairs that require Software, Engineering, or Development Support. The covered eligible Machines, Contract Period (the HW Support Extension Effective Date to the HW Support Extension End Date), locations, options selected, and charges, all as applicable, are specified in the applicable Schedule. Newly added Machines are reflected in separate Schedules.

IBM will:

- a. provide remote technical support for problem determination (PD) and problem source identification (PSI);
- b. provide on-site technical resources, if necessary, for hardware defect resolution (for example, but not limited to, the exchange of field replaceable units (FRUs), provided that the parts are generally commercially available); and
- c. determine if an applicable resolution exists, which may include existing patches or workarounds for Client installation.

For the avoidance of doubt, IBM's responsibilities under Hardware Support Extension do not include any: (1) preventive service; (2) support for newly reported defects or previously reported or known defects for which no updates, patches, or fixes were created; (3) engineering change management; or (4) development of any new machine code updates, patches, or fixes (including those designed to address security). IBM publishes its responses to security vulnerabilities at its PSIRT blog found here: <https://www.ibm.com/blogs/psirt/>

### 1.3 Maintenance of Non-IBM Machines

IBM will provide repair Service for the manufacturer's base configuration for each covered model of Eligible non-IBM Machines specified in the Schedule.

Repair of non-IBM Machines is subject to the availability of parts and technical support required of the manufacturer. Repair parts will be functionally equivalent to those replaced, may be new or used, and may have been manufactured by other than the original manufacturer. Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or manufacturer technical support.

#### 1.3.1 Multiple Vendor Service

IBM provides maintenance support and repair coordination of maintenance activities for Machines in a multi-vendor environment (Multiple Vendor Service or MVS). For repair coordination, Client must notify service providers that IBM will be placing the requests for service. IBM then places warranty or maintenance calls with service providers on Client's behalf, and remains responsible for coordinating maintenance activities and problem resolution until resolved.

Notwithstanding other terms of this Attachment:

- a. Charges are based on MVS Inventory. IBM will adjust the monthly charges when the inventory changes;
- b. MVS Services do not automatically renew. Additions or renewals are documented in a new MVS Inventory List with the new inventory, period, and applicable charges; and
- c. Client commits to continue MVS for the specified transaction contract period. Neither party may terminate MVS during the first 12 months (the Minimum Period). Thereafter, a party may terminate upon three months' written notice.

### 1.4 IBM Software Maintenance

IBM provides software maintenance for Eligible Programs for which Client is licensed. IBM makes available the most current commercially available version, release, or update to all of the Eligible Programs for which Client acquires support in the specified operating environment, as made available. Information to order versions, releases or updates is found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss> then select the Entitled Software Update (ESU) screen tab.

Eligible Programs are listed at [www.ibm.com/services/supline/products/](http://www.ibm.com/services/supline/products/) or may be obtained from Client's IBM representative. The listing of Eligible Programs contains the last date of service for each respective release. IBM supports only current releases of Eligible Programs. It is Client's responsibility to ensure that its Eligible Programs are current when requesting Service.

IBM provides assistance for Client's a) routine, short-duration installation and usage (how-to) questions and b) code defect-related questions.

IBM provides assistance via telephone and, if available, electronic access, only to Client's Information Systems (IS) technical support personnel. This assistance is not available to Client's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide 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.\*

Service is provided solely for Eligible Programs located within the United States (USA) and all support will be provided in the English language. Software "traps" or other tools that may be necessary to diagnose problems will be sent only to the USA Eligible Programs location, and the diagnosis and repair of data encryption will be discussed only with personnel at the USA Eligible Programs location.

#### 1.4.1 Software Maintenance After License Fee

Software Maintenance After License Fee (ALF) is a one-time charge to resume Software Maintenance if coverage lapsed due to non-renewal or termination. The new support period begins on the date that IBM accepts Client's order.

### 1.5. Support via USA Citizens Option

As available for selected Eligible Products and Services, Client may purchase IBM Support via USA Citizens for software or hardware in addition to maintenance. This feature provides standard IBM remote hardware and software support delivered and managed exclusively by USA Citizens located in the continental USA. IBM Support via USA Citizens is available via voice support, during prime shift only, for software. Hardware support is 24x7. Each time Client calls IBM, this process is

engaged only after Client identifies itself as a Support via USA Citizens Client and IBM verifies Client's entitlement. Client's hardware error data for analysis and call data will be managed by USA Citizens only.

### 1.6 Machine Control Program Remote Support

Remote Support Service is provided only for Machine Control Programs (MCP), meaning code delivered with an IBM Machine that executes below the external user interface (e.g., implemented in a part of storage that is not addressable by user programs). IBM will provide remote assistance (via telephone from IBM's support center or via electronic access) in response to Client's routine installation, configuration, and usage (how-to) questions pertaining to MCPs on covered IBM Machines, during normal business hours (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding national holidays). For an additional charge\*, Client may upgrade hours of coverage to 24x7.

## 2. Client Responsibilities

Client agrees:

- a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of inventory changes, utilizing the specified tools or systems to provide such written notice;
- b. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;
- c. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;
- d. to provide IBM with necessary information requested, and keep such information current;
- e. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;
- f. that some Services may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. Any third party communications or connectivity charges are Client's responsibility;
- g. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
- h. to securely erase all non-IBM programs and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return;
- i. 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;
- j. that Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Services, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures;
- k. that Services may be performed on-site at Client's Specified Locations and off-site at IBM locations, and that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
- l. that the terms of the Machine Code License (provided at: [http://www-947.ibm.com/systems/support/machine\\_warranties/support\\_by\\_product.html](http://www-947.ibm.com/systems/support/machine_warranties/support_by_product.html)) apply to Eligible IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
- m. to follow the service request procedures that IBM provides, to include installing entitled Machine Code and other software updates (downloaded from an IBM web site or copied from other electronic media), and to follow IBM's (or manufacturer's) guidelines pertaining to operator responsibilities, maintenance procedures, and supplies, prior to placing a Service request;
- n. that, with respect to Services under this Attachment, the parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased), and neither party shall be liable to the other for such Loss except liability for negligence under applicable law;
- o. that Client cannot resell Services or transfer Services to another Machine; and
- p. that IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example name, business telephone, address, email and user IDs for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent.

## 3. Automatic Inventory Increase for Machine and Software Maintenance Services

If Client selects the Automatic Inventory Increase Option, IBM will automatically increase the inventory count and associated Services at Specified Locations. The following terms apply. Upon request, each party will provide reasonable cooperation to the other in updating the last formal inventory.

#### **OPTION #1 - MACHINE MAINTENANCE SERVICES**

If the Machine is under warranty when added, Services will commence at warranty exit. If the Machine is not under warranty when added, 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 remain outside the scope of this section unless Client requests IBM add them during the transaction contract period. Services are the same as for all other Machines of the same type at the Specified Location.

Newly installed IBM Machines of the same type as WSU are added at date of actual installation and covered at the same WSU support level.

#### **OPTION #2 - SOFTWARE SERVICES**

IBM will increase the inventory count and associated Services when an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. Applicable Services are the same as for other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

Services will commence immediately upon addition of the Eligible Program to the inventory (After License Fees may apply), except if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then Services via ServiceElite will commence at the end of that support period.

#### **4. Charges**

For each transaction, Total Services charges are adjusted when:

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

For sales through IBM, charges are based on Service selections, price protection option, payment option, and any prepay period. Renewal charges are calculated at the start of each renewal period.

For sales through an IBM BP, the IBM BP sets the charges and charges terms. The IBM BP may impose an additional charge for some actions (e.g., termination), or for IBM's provision of some additional services (e.g., Service upgrades) as identified in this Attachment and its associated TDs with an asterisk ("\*\*"). Check with the IBM BP regarding asterisked terms to determine if you will incur an additional charge or may be entitled to a credit or refund. Payment is made directly to the IBM BP.

##### **4.1 Price Protection**

For each transaction package, Client selects one of the following Price Protection Options. Client's selection is specified in the Schedule for that transaction.

#### **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, Client is invoiced at the charge rates that are then in effect and that invoice will serve as Client's notice of changes. Newly added Eligible Products and Services and changes to configurations and Services assume the charge rate that applied at the previous yearly anniversary of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period are added at the charge rate that applied on their initial availability date.

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

For the transaction contract period, charges for included Eligible Product configurations and Services do not increase. Newly added Eligible Products and Services and changes to existing Eligible Product configurations and Services assume the charge rate that applied at the transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period are added at the charge rate that applied on their initial availability date. Client receives the benefit of a decrease in applicable charges for amounts that become due on or after the effective date of the decrease.

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

Prepaid Services are not subject to increases in charges (during the prepaid period) for included Eligible Product configurations and Services. Newly added Eligible Products and Services and changes to existing Eligible Product configurations and Services 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 assume the charge rate that applied at transaction contract period start, with adjustment for the reduced prepay period. If Client elects to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), Client 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.

#### 4.2 Re-establishment Fee

If Client's warranty or maintenance Service coverage for a Machine lapses by 90 days or more, and Client subsequently requests to restart Services, a re-establishment fee applies based on the number of days of lapsed coverage, up to 365 days of the applicable Service fees for the Machines.

#### 5. Renewal

Services automatically renew unless a party elects not to renew. The Renewal Contract Period specifies the number of years (0 means no renewal elected) for which Services will renew, unless IBM receives nonrenewal notice 30 days prior to the end of contract period. Services will then terminate at the end of the current transaction contract period.

To avoid termination at contract period end date, if Client requires a Purchase Order (PO), IBM must receive the PO at least 30 days prior to the contract period end date.

#### 6. Withdrawal of Service or Support, Change of Support Level

IBM may withdraw a Service or support for an eligible Product on three months' written notice.

For some Products, instead of withdrawing all support for those Products, IBM will withdraw only engineering and development support and continue to provide limited support for known defects (Change of Support Level). Unless otherwise specified in the Change of Support Level notice, IBM will continue to:

- a. provide remote technical support for problem determination (PD) and problem source identification (PSI);
- b. provide on-site technical resources, if necessary, for hardware defect resolution (for example, but not limited to, the exchange of field replaceable units (FRUs), provided that the parts are generally commercially available); and
- c. determine if an applicable resolution exists, which may include existing patches or workarounds for Client installation.

Beginning on the effective date in the notice, IBM's responsibilities will no longer include any: (1) preventive service; (2) support for newly reported defects or previously reported or known defects for which no updates, patches, or fixes were created; (3) engineering change management; or (4) development of any new machine code updates, patches, or fixes (including those designed to address security). IBM publishes its responses to security vulnerabilities at its PSIRT blog found here: <https://www.ibm.com/blogs/psirt/>

Affected Products will be covered under the new support level on the effective date in the notice (Effective Date), unless Client notifies IBM in writing of Client's intent to terminate coverage before the Effective Date.

#### 7. Termination

**\*(SELECT THIS TEXT FOR ALL CLIENTS OTHER THAN STATE OR LOCAL GOVERNMENT.)**

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

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

##### PROVISION #2 - MULTI-YEAR TRANSACTION CONTRACT PERIOD

Client has committed to continue Services for the entire transaction contract period. However, Client may terminate Services for an Eligible Product, on 60 days' written notice to IBM, if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. Otherwise, if Client chooses to terminate Services not being replaced by equivalent Services after the first year, Client may do so by providing IBM 60 days' written notice and paying an adjustment fee equal to one month's charges for each year in the Transaction Contract Period.\* After allowing for applicable adjustments, Client will receive a credit for any remaining prepaid period associated with Services Client terminates in accordance with this provision.\*

**\*(SELECT THIS TEXT FOR ALL QUALIFIED STATE AND LOCAL GOVERNMENT CLIENTS)**

Client has committed to continue Services for the entire transaction contract period, but may terminate Services for an Eligible Product, on 60 days' written notice to IBM, if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. Client may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated. Otherwise, if Client chooses to terminate Services not being replaced by equivalent Services, Client may do so by providing IBM 60 days' written notice, after the Services have been under contract for at least one fiscal year and if a multi-year transaction contract period, paying an adjustment fee equal to one month's charges for each year in the Transaction Contract Period.\* Client will receive a credit for any remaining prepaid period associated with Services terminated under this provision.\*

**8. Data Processing Protection**

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/my-support/s/article/support-privacy> apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

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This 1) Attachment, 2) applicable Transaction Documents, and 3) the Agreement identified below comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client 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 and its applicable Transaction Documents, "Client", "Customer", "you" and "your" refer to the accepting Client entity, which may be identified below.

**Agreed to:**

By \_\_\_\_\_

Authorized signature

Name (type or print):

Date:

Enterprise number:

Client address:

**Agreed to:**

International Business Machines Corporation (IBM)

By \_\_\_\_\_

Authorized signature

Name (type or print):

Date:

Reference Agreement number:

Attachment number: 0000MSA

IBM address: