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CHAPTER 4. SPECIAL ITEM 132-12: MAINTENANCE AND REPAIR

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) will provide for maintenance, repair parts and/or per-call repair service for the machines and equipment listed in this Price List for all Federal agencies (as defined in Paragraph (b) of 40 USC 472) 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). Maintenance service and repair parts will be provided to the Government for equipment installed within the United States, the District of Columbia, Puerto Rico. On a case-by-case basis, IBM will perform Maintenance Services to overseas U.S. Government locations which are in support of national or mutual defense operations (including U.S. Embassies), and to locations which support the national interest of the United States. Per-call repair service will be provided only for equipment installed within the United States, the District of Columbia and Puerto Rico.

IBM confirms clause 52.222-48, Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment-Contractor Certification applies to the services performed under this SIN for IBM products.

4.1 SERVICE AREAS

a. The maintenance and repair service rates listed herein are applicable to any ordering activity location within a __ (See IBM Clarification below) **(**insert miles**)** mile radius of the Contractor's service points. If any additional charge is to apply because of the greater distance from the Contractor's service locations, the mileage rate or other distance factor shall be stated in paragraphs 8.d and 9.d of this Special Item Number 132-12.

IBM's standard maintenance pricing applies regardless of the ordering activity's domestic location, except for service levels that require enhanced response time (i.e. 2-hour).

b. When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

IBM has a variety of facilities that support the maintenance and repair of equipment. Should the repair of equipment require the machine or part be returned to IBM, IBM will provide specific shipping information to the customer at the time the service call is placed to 1-800-IBM-SERV.

4.2 MAINTENANCE ORDER

a. Agencies may use written orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within thirty (30) calendar days from the date



of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12), unless notified otherwise by Contractor. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor

If the Government's 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 the Government subsequently requests to restart the Service coverage, a Re-establishment Fee will apply. 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 Services. Where Machine(s) do not meet IBM's safety and serviceability requirements, the Government agrees to pay for any repairs deemed necessary to IBM prior to IBM accepting the applicable Machine for ongoing Service coverage.

Individual Government-owned Machines initially become subject to this Special Item on the date IBM receives the Government's order or on a later date if specified therein. The date of receipt by IBM of any written notices or orders shall be the date such notices or orders are received by IBM's Customer Fulfillment team.

Orders for maintenance coverage shall show the machine type, model, serial number, and specified location of the Machines. An order must include funding for the total machine, that is, the model and all of its installed IBM features and all of its internally connected non-IBM products for which maintenance service coverage is generally available.

b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lesser period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance or warranty period associated with the purchase of equipment.

c. Maintenance may be discontinued by the ordering activity on sixty (60) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective sixty (60) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

The Government's discontinuance notice shall specify the type and serial numbers of the machines and the last date (day, month, year) of coverage. Notice, as stated above, should also be provided for a discontinuance when occurring at the end of the Contract/Renewal period, but failure to give notice shall not be deemed as obligating the succeeding fiscal year's funds.

Also, please refer to section called "Termination and Termination Charges" for additional terms.

d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.



If not terminated, a renewal order shall be issued under the contract effective on the first day of the new fiscal year.

If a renewal delivery order is received by IBM with a coverage commencement date later than the first day of the fiscal year, the Government shall promptly modify such order to reflect October 1 of the then current fiscal year. Any service performed by IBM during this lapsed period is subject to Per-Call Repair Service provisions of this contract for the period October 1 through the coverage commencement date set forth in the renewal order. A Re-establishment Fee may apply as described in section (a) above.

Should an agency notify IBM of their intent to renew, place maintenance/repair calls and then not provide a funded delivery order to IBM, the agency will be billed for the Service calls in accordance with the Per-Call Repair Services terms of this SIN.

If neither a renewal order nor a letter of intent to renew has been received by IBM, then the ordering activity will be billed for any Service calls place after the expiration of their funded maintenance order.

e. Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

The Government's purchase order shall specify the availability of funds and the period for which funds are available.

f. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

4.3 REPAIR SERVICE

a. Agencies may use written orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service under this contract. b. When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering activity agrees, in advance, that additional repair personnel are required to effect repairs.

Note: orders by the Government for Spare Parts are Repair Parts not associated with IBM maintenance or warranty are not available under this IBM GSA Schedule, therefore considered non-GSA items.

4.4 LOSS OR DAMAGE

The Government is responsible for risk of loss of, or damage to, Machines during the period such Machines are in transit to IBM, except IBM is responsible for risk of loss of, or damage to (1) IBM-owned Machines and (2) Machines not owned by IBM while in IBM's possession or in



transit, in those cases where IBM is responsible for the transportation charges. In addition, IBM will be responsible for any damage caused by IBM's negligence.

4.5 SCOPE

- a. The Contractor shall provide maintenance for all equipment listed in the IBM GSA Maintenance product pricelist, as requested by the ordering activity during the contract term. Repair service and repair parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.
- b. Equipment placed under maintenance service shall be in good operating condition.
 1. In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor within one month following the date maintenance coverage commences. Such inspection is without charge to the ordering activity. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge, or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request. IBM's rates and terms are set forth under Appendix B and the section titled Hourly (Per-Call) Service of IBM Machines.
 2. Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's uninterrupted guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order, provided the condition of the Machine was not due to improper use or damage by the customer.
 3. If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

IBM will provide maintenance coverage for Government-owned machines, and for IBM machines financed and leased under Special Item 132-3. The maintenance prices listed in this Price List include labor and maintenance parts, and provide for coverage during the indicated period (e.g., 24x7 Same Day Coverage or 9x5 Next Day Coverage).

If the Government leases Machines from parties other than IBM, installed within the 48 contiguous States and the District of Columbia, maintenance coverage for such Machines may be provided under this Special Item, subject to the understanding that the Government has authority from the owner to order such coverage, and provided that Maintenance coverage for such Machines is available.

Whenever the Government requires that maintenance 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.



4.6 RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.
- b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

4.7 RESPONSIBILITIES OF THE CONTRACTOR

For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as skilled personnel are available during normal business hours, Monday through Friday, of the applicable IBM service location.

Refer to section entitled Hourly (Per Call Services), elsewhere in this chapter, for a complete set of terms associated with Hourly (Per Call)Service of equipment not covered by a maintenance contract or warranty.

4.8 MAINTENANCE RATE PROVISIONS

- a. IBM's maintenance rates include labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

b. REGULAR HOURS

The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

IBM Standard maintenance service levels for eligible machines may be found in the maintenance price list.

For basic maintenance of IBM Machines, the Service description is set out in IBM's price quote/Transaction document. Below are maintenance coverage options offered by IBM:

Onsite Repair

24 x 7 same day - Service is provided around the clock, every day, including IBM holidays. When onsite service is required, a service technician is scheduled to arrive at the Government's site within 24 hours of receiving the call, typically the same day. Some products are eligible for specific response time objectives of either two or four hours, after the remote problem determination is completed.

9 x 5 next business day - A service technician is scheduled to arrive at the Government's site on the business day after IBM receives the Government's call. Business days are Monday through Friday, 8 am to 5 pm in the local time zone, excluding IBM holidays.

Depot Repair

When the Government calls IBM to request service and if the product cannot be repaired with the help of remote support, IBM will either (1) send the Government a return carton, with prepaid label to ship the failing part to the depot center for repair, or (2) send a courier to pick up the failing machine and deliver it to the depot center for repair. The target repair time, dependent on the machine type, ranges from as little as 12 hours to up to five business days after receipt at the depot.

Exchange Services

Dependent on machine type, either a courier or service technician will deliver a replacement product to the Government in exchange for the failed product. Service calls are accepted anytime, but the exchange service is available from 8 am to 5 pm, Monday through Friday, Eastern Time. All shipping and handling is paid by IBM.

Onsite Exchange - IBM will ship a replacement the same day the service call was received and schedule next day delivery to the Government. If the service call is received after 8 p.m. Eastern time, the replacement will be shipped the following business day. An IBM service technician will go to the Government's site to remove the failed product and install the replacement product. In addition, the service technician will handle all return shipping responsibilities.

EasyServ Exchange - IBM will ship a replacement the same day the service call was received and schedule next day delivery to the Government. If the service call is received after 8 p.m. Eastern time, the replacement will be shipped the following business day. Removal of the failed product and installation of the replacement is the Government's responsibility. The replacement packaging will include shipping instructions on how to return the failed product using the same carton that contained the replacement.

The Service response times described above are objectives, not guarantees. Not all levels of service are available for all products. See the Maintenance Price List for details.

c. AFTER HOURS

Should the ordering activity require that maintenance be performed outside of the coverage hours of the maintenance agreement, charges and terms for the hourly service is in accordance with the section titled Hourly(Per Call) Service of IBM Machines and Appendix B.

d. TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be:

IBM will invoice the Government for travel expense associated with maintenance service only when the Machine's location is inaccessible by both private automobile and scheduled public transportation.

IBM will invoice the Government, at the hourly rates in Appendix B for service time, including travel time and waiting time, for maintenance service provided outside the Period of Maintenance service.

4.9 REPAIR SERVICE RATE PROVISIONS

- a. **CHARGES.** Charges for Per Call repair service are as outlined in Appendix B.
- b. **MULTIPLE MACHINES.** When repairs are ordered by a ordering activity on two or more machines located in one or more buildings within walking distance of each other, the charges will be computed from the time the repairman commences work on the first machine, until the work is completed on the last machine. The time required to go from one machine to another, or from one building to another, will be considered actual work performance, and chargeable to the ordering activity, provided the time consumed in going between machines (or buildings) is reasonable.
- c. **TRAVEL OR TRANSPORTATION**
 - (1) **AT THE CONTRACTOR'S SHOP**
 - a. When equipment is returned to the Contractor's shop for adjustments or repairs which are not covered by the guarantee/warranty provision, the cost of transportation, packing, etc., from the ordering activity location to the Contractor's plant, and return to the ordering activity location, shall be borne by the ordering activity.
 - b. The ordering activity should not return defective equipment to the Contractor for adjustments and repairs or replacement without his prior consultation and instruction.

- (2) **AT THE ORDERING ACTIVITY LOCATION**

When equipment is repaired at the ordering activity location, and repair service rates are established for service areas or zones, the listed rates are applicable to any ordering activity location within such service areas or zones.

Refer to Appendix B for additional details.

- d. **LABOR RATES**

Refer to Appendix B for applicable IBM Per Call Rates.

4.10 REPAIR PARTS/SPARE PARTS RATE PROVISIONS

Parts used to affect repairs by IBM may not be new but will be in good working order and at least functionally equivalent to the item replaced. Parts are guaranteed to be free from defects in material and workmanship for a period of three months from the date of installation on the Machine(s). The Government shall pay for all parts furnished at the prices in effect at the time of the order. All parts shall be furnished at a discount of 0% off IBM's commercial list prices.

4.11 GUARANTEE WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

- a. **REPAIR PARTS/SPARE PARTS**

All parts, furnished either as spares or repairs parts will be guaranteed/warranted for a period 3 months in accordance to the terms set forth below:



The machines or machine elements exchanged or parts provided under this Special Item may be used, but will be in good working order and at least functionally equivalent to the item replaced. Parts are warranted, for three months after delivery, to be free from defects in material and workmanship. IBM's obligation is limited to furnishing, on an exchange basis, replacements for parts which have been promptly reported by the Government as, in the Government's opinion, defective, and are so found to be by IBM upon inspection.

4.12 INVOICES AND PAYMENTS

a. Maintenance Service

1. Invoices for maintenance service shall be submitted by the Contractor on an annual, quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.
2. Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

b. Repair Service and Repair Parts/Spare Parts

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where credit card payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with paragraph 4.10, above. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

4.13 ADDITIONAL TERMS AND CONDITIONS: MAINTENANCE

4.13.1 MAINTENANCE AND WARRANTY SERVICE COVERAGE

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Government of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine, and 2) provide the Service either at the Government's location or service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance. Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is 1) the designated, serial-numbered Machine, if applicable, and 2) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade. When IBM provides on-site repair service for Systems Equipment installed within the 48 contiguous States and the District of Columbia, IBM will promptly dispatch a service technician (ST) to the Government's location to meet the stated service level response. The assigned location of ST's will be determined by IBM considering the service requirements of all IBM

customers. Service may, at the option of IBM, be provided by personnel of IBM's subsidiaries, affiliates, or subcontractors.

The Government agrees to provide a suitable environment for machines as specified by IBM. Subject to its security regulations, the Government will provide IBM full, free, and safe access to machines so that IBM may provide on-site service.

When the type of service requires that the Government deliver the failing Machine to IBM, the Government agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to the Government, at IBM's expense unless IBM specifies otherwise. If the Government specifies an alternative shipping method, other than IBM's standard, additional charges may apply. IBM is responsible for loss of, or damage to, Customer's Machine while it is 1) in IBM's possession, or 2) in transit in those cases where IBM is responsible for the transportation charges.

The Government agrees to:

1. In cases where the Government does not have title to the equipment, obtain authorization from the owner of the equipment to have IBM perform service, and
2. Where applicable, before IBM provides Service:
 - a. Follow the problem determination, and service request procedures that IBM provides,
 - b. Secure all programs, data, and funds contained a Machine, and
 - c. Inform IBM of changes in a Machine's location.
3. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
4. When Customer returns a Machine to IBM for any reason --
 - a. to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - b. 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 Customer returns to IBM; and
 - c. IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

Replacements

When service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes the Government's. The Government represents that all removed items are genuine and unaltered. The replacement may not be new, but it will be in

good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance service status of the replaced item. Before IBM exchanges a Machine or part, the Government agrees to remove all features, parts, options, alterations and attachments which are not under IBM's service. The Government also agrees to 1) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and 2) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing the Government with an exchange replacement for installation by the Government. Such exchange replacements may be 1) a part of a Machine (called a Customer Replaceable Unit, or "CRU" e.g., keyboard, memory, or hard disk drive), or 2) an entire Machine. The Government may request IBM to install the replacement CRU or Machine, however, the Government may be charged for the installation. IBM provides information and replacement instructions with the Government's Machine at any time on Government's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and the Government may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 days of Customer's receipt of the replacement. The Government is responsible for downloading designated Machine Code and Licensed Internal Code updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade. A feature alone or a Machine with less than all of its installed IBM features is not eligible for Maintenance Service Coverage. Feature/model increments removed from a Maintenance Service qualified machine DO NOT retain Maintenance Service Qualification (MSQ) status on a standalone basis. IBM does not offer Maintenance Service on a feature/model conversion increment that changes the capacity, speed, or function of a Machine beyond that which is provided by IBM.

Items Not Covered:

Repair and exchange Service does not cover:

1. Accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames, and covers);
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or third party;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which BM is not responsible;
5. service of Machine alterations; or
6. service of a Machine on which the Government is using capacity or capability, other than that authorized by IBM in writing.

IBM provides maintenance service for selected non-IBM machines.

Government's Responsibilities:

When the Government contracts for an applicable Service, the Government agrees:

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 wish to move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. that when the Service includes IBM providing you with access 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 necessary information it requests which is 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 Department or Agency ;
6. You acknowledge the each party will assign personnel that are qualified to perform the tasks required of such party under this contract 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.
7. Unless otherwise agreed in a 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 contract, 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.
8. acknowledge that some devices for x86 or System x machines (for example, solid state 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.

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.

4.13.2 TERMINATION AND TERMINATION CHARGES

The Government has committed to continue Services for the entire transaction contract period, but may terminate a Maintenance Service or an Eligible Product, on two months written notice to IBM. Subject to the contracts Disputes Act and FAR 52.233-1 (Disputes), IBM may terminate the service if the Government does not meet its obligations.

1. The Government may terminate a Maintenance Service with a two months written notice, without adjustment charge, provided any of the following circumstances occur: 1.
2. The Government permanently removes the eligible product, for which the Service is provided, from productive use; or
3. The eligible location, for which the Service is provided, is no longer controlled by the Government (for example, because of sale or closing of the facility);

Client may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated, or for US Federal Government Clients, by the Government exercising its rights of early termination in accordance with the termination provisions set forth in FAR 52.212-4 paragraphs (l) Termination for the Government's convenience and (m) Termination for Cause. Otherwise, if Client chooses to terminate Services not being replaced by equivalent Services, Client may do so by providing IBM two months written notice, after the Services have been under contract for at least one fiscal year. Termination adjustment fees will not apply and Client will receive a credit for any remaining prepaid period associated with Services terminated under this provision.

Notwithstanding anything to the contrary in this Agreement, the Government's obligation for performance 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 of recurring maintenance service may arise 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.

The Government agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through the Service termination, and ii) reimbursable expenses IBM incurs through Service termination.

4.13.3 WITHDRAWAL OF MAINTENANCE

IBM will offer maintenance services for Machines as long as such services are generally available. IBM will modify this contract as notification of machine availability status changes as announcements are made to IBM's customers generally. See Appendix F for a list of Machines with their corresponding announced maintenance withdrawal dates.

For Machines that have a planned withdrawal date during the period of this contract, IBM will accept orders for maintenance only through the planned withdrawal date. Orders for per-call repair service and parts after the planned withdrawal date are subject to availability.

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to the Government, IBM will give the Government a prorated refund.

4.13.4 ALTERATIONS/ATTACHMENTS

General

An alteration is any change made to an IBM machine that deviates from IBM's physical, mechanical, electrical, or electronic design (including microcode), whether or not additional devices or parts are used. An alteration is also any interconnection to an IBM machine at other than an IBM defined interface of (1) an IBM machine, (2) non-IBM machine, or (3) any other product.

An attachment is non-IBM equipment connected, directly or indirectly, to an IBM machine at an IBM defined interface. The connection may be mechanical, electrical, or electronic.

If an IBM machine under an IBM Customer Agreement is altered, IBM requires that the unaltered portion of such machine be promptly inspected. The inspection helps to determine if IBM can still provide Warranty Service or Maintenance for the unaltered portion of the machine and if there are any apparent safety hazards. After inspection, IBM will continue to make Warranty Service or Maintenance available, as appropriate, for the unaltered portion of an IBM machine. This service will be available as long as it is safe and practical, using standard IBM tools, diagnostics, maintenance documentation, and procedures.

For purchased machines where IBM has Warranty Service or Maintenance responsibility, the customer should promptly notify IBM upon the completion of any installation, reinstallation, modification, or removal of an alteration to or from an IBM machine.

For purchased machines under warranty or Maintenance Service, MSQ and warranty are suspended at the time other-than-IBM technical work commences. MSQ is reinstated via a Maintenance Service Acceptability Inspection.

For machines owned by IBM, the customer should notify IBM, in writing, before an alteration is made. The customer should promptly notify IBM following the removal of the alteration.

Each notification will allow IBM to schedule an inspection to determine that our ability to provide Warranty Service or Maintenance for the unaltered portion of the machine is unimpaired and that there are no apparent safety hazards.

Inspection Of Alterations

IBM requires an inspection of the unaltered portion of an IBM machine to determine the continued availability of IBM Warranty Service or Maintenance. The inspection by local service personnel is billable at IBM's Hourly Service rates.

IBM will advise the customer, in writing upon request, of any limitation, resulting from the alteration, affecting IBM's ability to provide Warranty Service or Maintenance. IBM will not design special tests for the unaltered portion of an IBM machine or for an alteration. Nor will IBM make engineering analyses in an attempt to determine possible effects of an alteration. During an inspection, IBM will use standard tests and procedures. The IBM inspection will

check for apparent safety hazards, disabled diagnostics, access restrictions, parts, and wiring not readily distinguished from IBM parts and wiring, and correct operation of the unaltered portion of the IBM machine. IBM may check for other items during an inspection.

The inspection does not take into account the complexity of an alteration, and may not detect all problems that may result from the alteration.

Customers are responsible for the operation of alterations and for providing IBM service representatives free and clear access to the unaltered portion of the IBM machines.

Maintenance Plan For Altered Machines

If, in attempting to service and maintain the unaltered portion of a machine, IBM is precluded from completing normal diagnostic efforts and maintenance procedures as a result of interference by an alteration or attachment, or if IBM determines that the failure may be located in the alteration or attachment, IBM will notify the customer that he or she has two options:

- Request the service organization responsible for maintaining the alteration or attachment to proceed with diagnosis, maintenance, and repair of the alteration or attachment, or
- Have the alteration or attachment disconnected or removed before IBM will proceed further. If the cause of the failure cannot be determined, IBM may require that the alteration or attachment be completely disconnected and removed. This may be required for IBM to complete maintenance and repair of the unaltered portion of the machine.

When an alteration or attachment interferes with installation of engineering changes, model changes, programs or features provided by IBM, or with their maintenance or removal, IBM may require that the alteration or attachment be removed as a condition of our completing installation, maintenance, or removal.

- Should an alteration or attachment affect maintenance of an IBM machine, IBM will complete maintenance and repair of the unaltered portion in as timely and effective a manner as possible.

4.13.5 ACCEPTANCE

For monthly recurring charge services, the acceptance date is the last day of each month. For annual charge services, the acceptance date is the last day of the annual period.

4.13.6 MAINTENANCE CHARGES AND MAINTENANCE CREDITS

A Transaction Document (e.g. IBM quote or proposal) specifies the amount payable for Maintenance Services, based on one or more of the following types of charges: one time charge, fixed price or recurring. Additional charges may apply and will be specified on the Transaction Document.

IBM does not give credits or refunds for any one time charges or other charges already due or paid. Charges billed on a recurring basis will be billed in arrears.



Adjustment to Maintenance Charges:

A change in a Machine's type of service will result in an adjustment to maintenance charges. IBM will provide an upgrade to an on-site type of service on a per-incident basis for selected machines. A change in a Machine's specifications may result in an adjustment to maintenance charges.

Machines maintained offsite, on an exchange basis, Machines maintained under a depot maintenance agreement, and Machines installed on board Government ships are not eligible for maintenance credits.

Travel charges:

IBM will invoice the Government for travel expense associated with maintenance service only when the Machine's location is inaccessible by both private automobile and scheduled public transportation.

IBM will invoice the Government, at the hourly rates in Appendix B for service time, including travel time and waiting time, for maintenance service provided outside the Period of Maintenance service.

4.13.7 INVOICING AND PAYMENT

All charges for Maintenance and Per-Call Repair Service are due and payable upon receipt of IBM's invoice

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

4.14 HOURLY (PER CALL) SERVICE OF IBM MACHINES

IBM provides hourly service in accordance with the following conditions and provisions.. Service may be obtained by contacting IBM at 1-800-IBM-SERV (426-7378).

For Machines located in the United States, IBM provides hourly services not covered by another IBM agreement, as described herein. By ordering or receiving Service, the Government Customer in possession of the Machine (Client): i) authorizes IBM to provide billable Service under these terms, and ii) agrees that IBM will invoice for Services performed (including time and materials). IBM Per Call Rates are as specified in Appendix B. Additional or different terms in any written communication from the Government (such as a purchase order) are void.

1. Scope of Service

Machines are IBM-branded devices, including features, upgrades, and accessories.

Service is work to keep Machines in, or restore them to, compliance with official published specifications (i.e., preventative maintenance, repair, exchange, remedial maintenance, adjustments, and replacement of maintenance parts).



Any single repair must be the responsibility of either IBM or another party. IBM may work jointly with a non-IBM service representative to determine where a problem resides when correct operation of both the IBM and interconnected non-IBM equipment is in doubt.

In the case of an alteration, Service is limited to the unaltered portions of the Machine. As a condition of Service, IBM may require removal of alterations and restoration of a Machine to its official published specifications, at the Government's expense.

Parts or Machines provided by IBM may be new or used (but will be in good working order and at least functionally equivalent to the item replaced), and become the Government's property. Replaced Machines become IBM's property and must be returned to IBM promptly or additional charges may apply. Certain parts are provided only on an exchange basis. IBM does not accept removed parts for credit.

When a part not furnished by IBM requires replacement, IBM will replace such part (except when such part is an alteration) with a directly interchangeable IBM part.

After the effective date for withdrawal of maintenance service for identified Machine types, Service depends upon availability of skilled personnel and resources such as parts, tools, and test equipment.

If a safety hazard is identified, IBM will notify the Government and further Service will be suspended until the condition is corrected.

Service does not include the provision of copies, fixes or replacements for Machine Code. Service may include installation of copies, fixes or replacements for Machine Code, to which the Government was entitled and IBM provided for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Machine Code is defined in the IBM License Agreement for Machine Code.

2. Order and Authorization

The Government orders IBM Hourly Service by contacting IBM at 1-800-IBM-SERV (426-7378). Where the Government is the lessee of a Machine, the Government agrees to obtain authorization from the owner in advance. A third party requesting Service for the Government must present proof of authority upon request.

3. Hours of Coverage

Service hours of coverage depend on a) resource availability, with priority given to contracted IBM hardware maintenance service agreement clients, and b) limited to normal business hours of the applicable IBM service location, Monday through Friday. Service is available outside normal business hours if the Machine failure is related to a) a federal, state or local government emergency, b) a situation with an immediate threat to life or health, or (c) a Machine failure attributed to, or requiring access to, proprietary IBM engineering information.

4. Charges

The Government is required to provide IBM a credit card, a funded purchase order, or other Agreement with funding for Per Call service that is mutually agreed to by IBM and the Government, prior to the start of Service. The Government must notify IBM if there is any additional requirements prior to service, such as including any special Government authorization or reporting procedures.

Service is provided at IBM's then generally available hourly service rates (see Appendix B) and minimum charges for time (including travel), parts prices then generally in effect, and charges for shipping expense, all as applicable, plus taxes as described below. Charges may vary based on the Machine type and the day and time Service is performed. A minimum charge will apply to each visit when a Service incident, although incomplete, is suspended during one visit and resumed during subsequent visits. However, when a Service action is interrupted for IBM convenience or to obtain a part, the minimum charge amount will be applied only once. If the Government at any time elects to terminate a Service call, the IBM representative will end the Service call and the Government will be charged for all time, expenses, and parts provided up to the point of termination.

If IBM determines a Service activity requires the efforts of more than one representative and Government concurs, additional charges will apply for additional individuals.

5. Warranty

IBM warrants that it provides Services using commercially reasonable care and skill. The warranty for a Service ends when the Service ends. Machines or parts provided by IBM during Service, whether new or used, when used in their specified operating environment and in conformance with their official published specifications, are warranted for three months after delivery from IBM to be free from defects in material and workmanship. IBM's obligation under this three month limited warranty is limited to furnishing, on an exchange basis, replacements for Machines or parts which have been promptly reported by the Government as defective and are so verified by IBM upon inspection.

These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, and fitness for a particular purpose. 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 warranties will not apply if there has been misuse, modification, improper maintenance, damage not caused by IBM, or failure to comply with instructions provided by IBM.

6. General

No right or cause of action for any third party is created by this Information Bulletin.

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.

Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.

Before IBM exchanges a Machine or part, Government agrees to securely erase all non-IBM programs, programming, removable storage media, funds, and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part returned to IBM for any reason, and ensure that it is free of any legal restrictions that would prevent its return.

Government is responsible for adequate content back up.

Neither party will disclose confidential information without a separate, signed confidentiality agreement.

IBM does not undertake to perform any of Government's obligations, or assume any responsibility for Government's business or operations.

Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of the Service.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business.

Government is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Service, and grants IBM permission to do the same. Government's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Government will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

IBM reserves the right to change, modify or withdraw its offerings, policies and practices, provided that such changes will only apply to Services after the effective date of the change.

4.14.1 ACCEPTANCE

On the date repair service is completed.

4.14.2 PER-CALL REPAIR CHARGES

All time and expense associated with the IBM per-call service request will be charged in accordance with the applicable rates shown in Appendix B.

4.15 SERVICE OF NON-IBM MACHINES

IBM provides maintenance service for the Non-IBM Machines identified in the maintenance price list for Non-IBM Machines. The service is designed to keep your Non-IBM Machines in, or restore them to, conformance with their specifications. Unless specified otherwise, 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.

The service of Non-IBM Machines does not include activities related to the following:

- A. Machine installation, engineering change activity, or preventive maintenance;
- B. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
- C. service of microcode or firmware;
- D. service of features, parts or devices not supplied by either: 1) the Machine's original manufacturer, or 2) IBM during the performance of this Service;
- E. service for accessories, supply items, and certain parts, such as batteries, frames, and covers;
- F. service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- G. service of a Machine with removed or altered Machine or parts identification labels;
- H. failures caused by a product for which we are not responsible; or
- I. service of Machine alterations

Service Termination - In the event that IBM cannot provide satisfactory service on any Non-IBM Machine due to reasons such as, but not limited to, IBM's inability to obtain a suitable supply of generic parts, IBM may terminate service for a Non-IBM Machine by providing advance notice to the Government. The Government may terminate service of Non-IBM Machines consistent with the terms in the section entitled Termination and Termination Charges.

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, we will notify you and terminate coverage.

4.16 ADDITIONAL TERMS

4.16.1 GENERAL

IBM shall not be obligated to furnish service or assistance in instances when causes beyond IBM's control as set forth in FAR 52.249-8, Default, April 1984, prevent IBM from furnishing service.

4.16.4 LIABILITY FOR INJURY OR DAMAGE

IBM shall not be liable for any injury to Government personnel or damage to Government property arising from the use of Equipment maintained or repaired by IBM, unless such injury or damage is due to the fault or negligence of IBM, in which case liability will be in accordance with the limits stated in Chapter 1 section "Limitation of Liability".



4.17 MAINTENANCE OFFERINGS

4.17.1 SERVICEELITE OFFERING

ServiceElite is an option available to Government customers that provides incentives to the standard maintenance price or the price of selected services available in SIN 132-51 of this Schedule. These incentives are available depending on specific qualifications as identified in the Term, Scope and Paperwork Reduction incentives below. These incentives are applied to all eligible components of the Government's delivery order.

Term Incentive

A term incentive is available on Government orders or Blanket Purchase Agreements (BPA's) that provide a multi-year commitment of IBM maintenance, notwithstanding the requirement for termination for fiscal year non-appropriation of funds or per the terms and conditions of termination identified below. The term for which the Government is committing to must be identified on the delivery order or on the BPA in order to take advantage of this incentive.

<u>Term</u>	<u>Incentive</u>	<u>Term</u>	<u>Incentive</u>
3 years	3%	4 years	4.5%
		5 years	6%

Additional Terms and Conditions

A. The ServiceElite offering is available in the United States, Puerto Rico, and the District of Columbia.

4.17.2 PRICE PROTECTION OPTION

IBM charges an uplift amount to the Government for choosing the Price Protection option. The Government's charges are calculated taking into account your Service selections and the term of the contract.

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 product 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.

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- Eligible Machine type, or Service is added, deleted, or changed.

4.17.3 MEDIA RETENTION OPTION

Under this Media Retention Option, IBM will modify Service for Machines as described in this Chapter to allow you to retain a defective flash memory or hard drive device that is replaced in the course of Service by us. If your reported problem requires the replacement of one of these devices, a replacement will be supplied by us and the removed defective device will be provided to you as your property for disposal by you.

IBM's proposal will identify the Eligible Machines by Specified Location, and period for which you wish to contract this Service. The IBM Eligible Machines covered under by your Purchase Order must also be under IBM warranty or separately covered by Machine maintenance Service with us.

You agree to:

1. identify a customer representative to receive the retained defective devices from IBM;
2. refrain from placing the defective devices into productive use; and
3. dispose of all retained devices in compliance with applicable environmental laws and regulations.

IBM is not responsible for the loss or disclosure of, or damage to, any data that may be contained on a removed defective device. Any removed device that is not returned to you will be retained as IBM property.

4.18 EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (GDPR)

The European Union passed the General Data Protection Regulation (EU/2016/679) (GDPR), effective 25 May 2018. The GDPR is designed to ensure a consistent level of protection of the rights and freedoms of natural persons with regard to the processing of their data and to establish one set of data protection rules for Personal Data. IBM is committed to GDPR readiness.

Regarding GDPR, you represent as follows:

- a. Either you do not require IBM to process Personal Data within the meaning of GDPR (e.g., because no processing of Personal Data occurs in the European Union (EU); no monitoring of Personal behavior takes place in EU; or your activities are otherwise exempt from GDPR); and you will communicate to IBM in writing, without undue delay, any anticipated change affecting this representation, or



b. You agree to IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit, which apply and supplement the contract. Please contact your IBM representative for the applicable Data Processing Exhibit.