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

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### 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.

### 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, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) 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). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. 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.

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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 and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.

c. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) 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.

Upon receipt by IBM of one month's prior written notice, the Government may discontinue maintenance coverage. Such 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 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, or issue an order under Per-Call Repair Service and Repair Parts provisions of this contract for the period October 1, through the coverage commencement date set forth in the renewal order.

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 AND REPAIR PARTS/SPARE PARTS ORDERS**

a. Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the contract period.

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.

### **4.4 LOSS OR DAMAGE**

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

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 herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare 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, without charge to the ordering activity.

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.
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.

#### **Machine Qualification for Maintenance Service**

With respect to Machines designated by IBM as "Customer Set Up" (CSU), the Government certifies that as of the date maintenance coverage commences such Machines are in good working order. With respect to non-CSU Machines, IBM reserves the right to inspect such Machines for maintenance coverage acceptability within one month from the date maintenance coverage commences. CSU Machines which are not in good working order at the time maintenance coverage commences, and non-CSU Machines which are deemed not acceptable for maintenance coverage as a result of inspection, are subject to disqualification by IBM.

Upon disqualification of a Machine from coverage, the Government may elect to have IBM bring the Machine to acceptable condition at IBM's rates and terms as set forth for Per-Call Service. Alternatively, the Government may elect to cancel its order for coverage and IBM will refund any monies paid by the Government for such Machine. However, in the event of such cancellation, IBM will charge for any Maintenance services (repair services) performed at the Government's request.

## **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 of 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.

Refer to section entitled "Maintenance Service Coverage", elsewhere in this chapter, for a complete description of IBM's standard maintenance coverage.

##### **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.

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.

##### **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 Regular Hours, charges for such maintenance, if any, will be specified in the pricelist. Periods of less than one hour will be prorated to the nearest tenth of an hour.

### 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 repair service will include the labor charge, computed at the rates set forth in Appendix B, for the time during which repairmen are actually engaged in work, and, when applicable, the charge for travel or transportation.

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 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 a 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 cash 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 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's Maintenance Services offering is available for 'total machines' only, that is a Machine and all of its installed IBM features and all of its internally connected non-IBM products for which maintenance service coverage is generally available.

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 return it to the Government, at its expense using IBM standard shipping methods. If the Government specifies an alternative shipping method, additional charges may apply.

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, problem analysis, and service request procedures that IBM provides,
  - b. Secure and restore 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 ii) 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 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.

When service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes the Government's. If the Government wishes to retain replaced parts for security purposes, the Government agrees to pay IBM's then-current purchase price for any retained parts. 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 subject to this Special Item. IBM reserves the right to verify that a Machine is acceptable for exchange. Machines which are defaced, altered, or damaged beyond repair are not acceptable for exchange. The Government also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange. Except for Machines leased, the Government shall acquire title to the exchanged machine at the time of exchange.

Service for some IBM Machines involves IBM providing the Government with an exchange replacement for installation by the Government. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU" e.g., keyboard, memory, or hard disk drive), or ii) 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 the 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.

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; or
5. Service of machine alterations
6. Service of a Machine on which the Government is using capacity or capability, other than that authorized by IBM in writing.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventative maintenance.

IBM provides maintenance service for selected non-IBM machines.

### **Government's 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 wish to move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. to return to IBM all defective CRUs (from covered Eligible Machines) within 15 days of your receipt of the replacement CRU. A "CRU" is a Machine part which is designated as a Customer Replaceable Unit (e.g. keyboards, memory, or hard disk drives). IBM provides CRUs to you for replacement by you;
3. 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;

4. to provide IBM with information it requests which is related to its provision of the Services to you and to notify IBM of any changes;
5. that you authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with you;
6. to pay any communications charges associated with accessing these Services unless IBM specifies otherwise in writing; and
7. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise.
8. 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 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 under this Agreement, 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.

#### **4.13.2 SERVICES FOR ADDITIONAL CHARGE AND EXCLUDED UNDER MAINTENANCE**

The following items are not covered under IBM's maintenance services, but may be provided under Per-Call Repair Service, or as otherwise identified in Chapter 7, Special Item 132-51 (e.g., machine movement charges).

1. Repair of machine damage, replacement parts, or increase in service time caused by
  - a. Failure to continually maintain a suitable environment as prescribed by IBM;
  - b. Accident, disaster, transportation, vandalism, misuse, or abuse;
  - c. Another product or device not under IBM warranty or a contract which includes IBM maintenance service;
  - d. Service of the Machine by other than IBM;
  - e. A non-IBM modification, when repairs are made within the first three-month period following such modifications to a Machine under maintenance coverage;
2. Repair of Machine damage, replacement of maintenance parts (due to other than normal wear), or repetitive service calls caused by the use of, inadequate use of, or failure to use specified supplies;
3. Inspection of an altered Machine;
4. Changes and repairs necessary to bring a Machine to acceptable condition for maintenance coverage under this Special Item;

5. Replacement or relocation of Machines and provision of necessary materials, including but not limited to rearrangement, relocation and discontinuance services in association with new equipment activity;
6. Replacement of a part not provided by IBM for a Machine; IBM will only replace such part with directly interchangeable IBM maintenance parts;
7. Reinstallation of systems displaced as a result of new equipment installations.

The services provided under this Special Item do not include:

- a. Furnishing supplies;
- b. Painting or refinishing Machines or furnishing material therefore;
- c. Replacement of parts which are not maintenance parts;
- d. Installation, maintenance, or removal of alterations or attachments to Machines or any service which is impractical for IBM to render because of such alterations or attachments.

#### **4.13.3 TERMINATION AND TERMINATION CHARGES**

IBM or the Government may terminate a Maintenance Service if the other does not meet its obligations concerning the Service.

The Government may terminate a Maintenance Service, on one month's written notice, without adjustment charge, provided any of the following circumstances occur:

1. The Government permanently removes the eligible product, for which the Service is provided, from productive use;
2. 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);
3. The Machine has been under Maintenance Services for at least six months and the Government gives IBM one month's written notice prior to terminating the maintenance Service.

For all other circumstances, the Government may terminate a Maintenance Service on one month's written notice to IBM, but such termination will result in adjustment charges equal to the charges remaining to complete the fiscal year in which termination occurred.

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.

#### **4.13.4 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.

#### **4.13.5 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.

If IBM is not notified of an alteration and it is discovered during a service action, an inspection should be initiated after advising the customer of its purpose and intent.

##### **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 after review by the appropriate Service Delivery Manager.

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. IBM developed these tests and procedures for use during installation, Warranty Service, or Maintenance of IBM machines, features, or model conversions.

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**

When an alteration in or attachment to an IBM machine or system:

- Interferes with the normal and satisfactory operation or maintenance of a machine in a manner that renders its maintenance and repair impractical for IBM's personnel having had the standard training and instruction, or
- Creates a safety hazard,

The customer must, as a requisite for continuing IBM Warranty Service or Maintenance:

- Modify the alteration or attachment to achieve a practical maintenance condition, or,
- Remove the alteration or attachment and return the machine to a practical maintenance condition.
- When maintenance of the unaltered portion of a machine or system has been determined upon inspection by IBM to be practical, and no safety hazard has been identified, IBM and customer responsibilities will be as follows:
- In servicing and maintaining the unaltered portion of a machine, IBM personnel will use the diagnostics, maintenance procedures, and other maintenance documentation normally supplied by IBM for the machine.

If, during a service call, IBM's diagnostic efforts indicate that the failure is located in the unaltered portion of the machine, we will proceed to perform maintenance and repair.

- 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.

#### **4.13.6 ACCEPTANCE**

On the last day of the maintenance period for which charges are stated; that is, month or year.

#### **4.13.7 MAINTENANCE CHARGES AND MAINTENANCE CREDITS**

##### **Standard Maintenance Charges:**

The Government agrees to pay maintenance charges for each Machine consisting of (1) a Maintenance Charge or Warranty Option Charge and (2) an Additional Maintenance Charge for a Usage Plan machine. Such charges are set forth elsewhere in this Price List.

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.

##### **Usage Charges:**

The Government agrees to promptly submit to IBM the meter reading for each Usage Plan machine. Such reading will be as of the close of the last workday of the invoice period for which the Maintenance Charge apply or upon Machine withdrawal.

##### **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.

#### **4.13.8 INVOICING AND PAYMENT**

All charges for Maintenance, Per-Call Repair Service, and Repair Parts 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 which are subject to change without notice. Service may be obtained by contacting IBM at 1-800-IBM-SERV (426-7378). **PARTS SOLD BY IBM MAY BE NEW OR SERVICEABLE USED PARTS.**

##### **Definitions**

The term "machine(s)" as used herein refers to machines and/or machine elements unless the context requires individual reference.

Machine-related services include, but are not limited to, installation planning, remedial and preventive maintenance, relocation and inspections.

IBM Hourly Service, as used in this bulletin, means machine or machine-related hardware services available from IBM, when such service is not covered under an IBM agreement.

##### **Authorization for IBM to Perform and Charge for IBM Hourly Service**

IBM's authorization to provide and charge for IBM Hourly Service is established by a customer request for service. The customer represents that they are the owner of the machine(s) or are properly authorized by the owner to request service. It is the customer's responsibility to ensure that their personnel or others requesting IBM Hourly Service on their behalf have proper authorization to do so. A customer requesting service is responsible for all charges associated with such service. Customer will be required to provide IBM a valid form of payment prior to service being performed. Valid forms of payment are credit card (preferred by IBM), funded purchase order, or other financial instrument mutually agreed to by IBM and the customer.

In those instances or locations where special customer authorization or reporting procedures are desired, IBM must agree to such procedures. It is the customer's responsibility to ensure that the IBM service representative is notified of such special procedures each time service is requested.

##### **IBM Hourly Service**

IBM Hourly Service may include repair or exchange service. A failing machine is a machine presented to IBM for IBM Hourly Service (failing machine). An exchange machine is a machine provided by IBM in exchange for a failing machine (exchange machine).

Repair service includes remedial maintenance and may include lubrication, adjustments, and replacement of maintenance parts, all as deemed necessary by IBM. Maintenance parts furnished by IBM may be used parts. When a failing machine is to be repaired or when other IBM Hourly Services are to be provided, at either the customer's or an IBM location, the customer is responsible to remove or implement other safeguards to protect all programming, programs, data and removable storage media prior to presentation to IBM.

When the customer presents a failing machine to IBM for exchange, and it is accepted by IBM, it becomes the property of IBM at the time of exchange. An exchange machine may not be new, but will be in good working order and at least functionally equivalent to the item replaced, and become the customer's property at the time of exchange. When a failing machine is to be exchanged, the customer is responsible to remove all programming, programs, data and removable storage media, and all non-IBM parts, options, alterations and attachments before such exchange. The customer agrees that all items not removed will be deemed to have been discarded. The customer is responsible for all risk of loss of, or damage to, machines owned by other than IBM during the period such machines are in transit to and from IBM, except for loss or damage caused by IBM's negligence. However, IBM is responsible for risk of loss of, or damage to, machines owned by other than IBM while in possession of IBM or in transit from IBM by an IBM selected carrier whose expenses were prepaid by IBM. IBM will not accept in exchange defaced machines, or those that show obvious signs of alteration or physical damage beyond repair. If upon subsequent inspection IBM determines that it has accepted in exchange a failing machine in a damaged or altered condition, the customer is responsible for IBM Hourly Service charges associated with repair of damage or restoration of such machine.

### **Hours of Availability**

The availability of IBM Hourly Service is limited to normal business hours, Monday through Friday, of the applicable IBM service location.

IBM Hourly Service will be made available outside normal business hours if the machine failure, for which service is required, is related to, (1) federal, state or local government emergency, (2) life or health-threatening situations, or (3) a machine failure attributed to, or requiring access to, proprietary IBM engineering information.

### **Machines with Non-IBM Alterations or Attachments**

In the case of an altered machine, service will be confined to the unaltered portions of the IBM machine. Any single repair must be the responsibility of either IBM or another party.

IBM service representatives will 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.

### **Machines Containing Funds**

The customer is responsible for removing, controlling and replacing or reloading funds contained in the machines. IBM will service machines containing funds only when the cash container cannot be opened prior to repair by IBM. The customer will remove the funds as soon as the container has been opened.

### **Machine Types Withdrawn by IBM from Maintenance Services under an IBM agreement**

After the effective date of discontinuance of IBM lease and rental machines and withdrawal of Maintenance Services for machines under an IBM agreement, IBM Hourly Service will be

dependent upon the availability of skills and other resources such as parts, tools, and test equipment.

IBM will attempt to complete maintenance or other services. If IBM determines that it is unable to fully restore the machine to good working order or complete any other services requested, IBM will notify the customer. Further, any assistance provided by additional IBM service representatives will also be charged for at the applicable IBM Hourly Service rates.

### **Safety**

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

### **Parts**

Parts sold by IBM may be new or serviceable used parts.

IBM does not accept removed parts for credit.

When a maintenance part not furnished by IBM requires replacement, IBM will, at the customer's request, replace such part (except when such part is an alteration) with a directly interchangeable IBM maintenance part.

### **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.

The Customer agrees to pay for all IBM Hourly Service, including service associated with troubles of an intermittent or repetitive nature, upon receipt of IBM's invoice. IBM Hourly Service will be provided at IBM's 1) then generally available hourly service rates and minimum charges for service time, including travel and waiting time, 2) parts, exchange and material prices then generally in effect, and 3) charges for travel and shipping expense, all as applicable. In addition, the customer will be invoiced for applicable taxes. Actual repair charges will be applied to the customer provided form of payment (credit card or purchase order) upon completion of the service request.

Charges for service will depend on the type of equipment and the time of day at the location where the work is performed. A minimum charge will apply to each service visit when a service incident, although incomplete, is terminated during one visit and resumed during subsequent visits. However, when a service action is interrupted, either for IBM convenience or to obtain a part for installation at a later time, additional charges to meet the minimum charge amount will be applied only once.

If a customer at any time elects to terminate an hourly service call, the IBM service representative will discontinue the service call and the customer will be charged for all time, expense and parts associated with the service that has been provided. If an IBM service representative incurs any travel time and expense in response to a service request that is later cancelled, the call will be considered to have been taken and the customer will be charged accordingly.

If an IBM service representative receives assistance because of an inability to diagnose a trouble and the trouble is of a nature that can normally be handled by one individual, the customer will only be charged for the time and expense of one service representative during any concurrent

period of time (except as previously described under "Machine Types Withdrawn by IBM from Maintenance Services under an IBM agreement"). However, whenever a service activity requires the efforts of more than one service representative, as determined by IBM, this requirement will be brought to the attention of the customer for concurrence prior to additional assistance being applied. In this event, the customer will also be charged for services of the additional individual(s) furnishing such assistance.

### **Limited Warranty and Disclaimer of Warranty**

The machines or machine elements exchanged or parts provided may be used and are warranted for three months after delivery from IBM to be free from defects in material and workmanship. IBM's obligation is limited to furnishing, on an exchange basis, replacements for machines, machine elements and parts which have been promptly reported by the customer as having been, in the customer's opinion, defective and are so found by IBM upon inspection. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS, AND THE CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**

#### **4.14.1 ORDERS FOR PER-CALL REPAIR SERVICE**

The Government shall issue a written order or credit card order to cover each call for repair service. Agencies are encouraged, whenever practicable, to use blanket delivery orders or credit cards in lieu of individual orders. In such instances, IBM will accept verbal orders from agency personnel as sufficient authority to provide billable service.

For IBM Hourly Service billing purposes only, IBM's normal business hours are 8:00 a.m. to 5:00 p.m., even if the local IBM working hours are different. These hours apply only to workdays. Workdays are considered to be Monday through Friday, except national or statutory holidays.

Each order issued for Repair Service shall specify the particular service requested, however IBM will not accept orders for service on Machine types which are not field repairable.

IBM shall not be obligated to furnish repair service or parts when causes beyond IBM's control (as set forth in FAR 52.249-8, Default, Apr. 1984) prevent IBM from furnishing such repair service.

#### **4.14.2 ACCEPTANCE**

On the date repair service is completed.

#### **4.14.3 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.

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## 4.15 REPAIR PARTS

### DEFINITION

A maintenance part is any repair or replacement part authorized for use by IBM service representatives in the field for maintenance of IBM machines. Most maintenance parts are field replaceable units (FRUs) which are not divided into subassemblies.

### GENERAL

IBM sells parts only for the maintenance and support of IBM machines. You agree to purchase parts with the intent to use maintenance parts for these purposes and not for other uses such as manufacturing. IBM limits the sale of parts due to specific concerns, such as patent restrictions, and the need to ensure continuing parts availability as follows:

#### Available for Sale:

IBM will sell parts, in reasonable quantities, for use by others in support of IBM machines. This includes:

- parts and assemblies which are considered FRUs and appearance items such as covers used for reconditioning, rebuilding or repairing damage of IBM machines;
- additional parts used for the performance of installation, removal and reinstallation of IBM features and model conversions on IBM machines;
- parts used for restoration of altered IBM machines; and
- parts defined by IBM to interface other manufacturers' equipment to an IBM defined multiple machine interface on an IBM machine.

Certain parts are sold only on an exchange basis. IBM will also sell certain maintenance tools, test equipment and supplies required for field maintenance of IBM machines.

Modification and improvements in design may occur at any time and could affect future availability of any part.

IBM will make parts available for sale as long as IBM uses such parts in maintaining IBM machines. IBM will fill quantity orders for maintenance parts when there is sufficient supply to permit. However, it may be necessary to restrict quantities to those required for immediate maintenance needs to help ensure continuing parts availability to all. After the discontinuance of IBM lease and rental and withdrawal of Maintenance Service for a machine, IBM will continue to accept orders for parts, in reasonable quantities, in the normal manner until existing stocks are depleted.

#### Not Available for Sale:

Items generally not available for sale include those parts, assemblies, subassemblies, components or raw materials used by IBM only in its manufacturing operations. Except as may be specified in individual OEM agreements, IBM does not sell IBM brand parts for use in support (including manufacturing and maintenance) of non-IBM brand machines, features, devices or alterations.

IBM may refuse to accept or may cancel orders for parts intended for other uses such as manufacturing.

## **ORDER ACCEPTANCE AND PROCESSING**

Customer orders will be accepted by the IBM Parts Sales Center. All communications regarding such orders, including authorization and direction for parts being returned, must also be directed to the IBM Parts Sales Center.

In an emergency, IBM will deliver an order for standard maintenance parts, required for an immediate repair, at an IBM Designated Parts Sales Location (DPSL) in the U.S. or at the country's parts sales location. An individual parts sales location may not have any hours of operation after normal business hours. When a part is not available at the DPSL or in the country where the customer requested delivery, IBM will make an effort to secure the part in an expedited manner at an additional charge; alternatively IBM will deliver the parts via standard channels.

A handling charge will apply to any order placed on an emergency basis. An additional charge will be applied to any order placed between the hours of 10 p.m.–8 a.m. in your local time zone, Monday–Friday, and anytime Saturday, Sunday and holidays.

Orders are to be placed directly with IBM Maintenance Parts Sales in Mechanicsburg, PA . Orders will be accepted by telephone at (800) 388-7080, by facsimile at (800) 610-7563, or via internet at <http://www.ibm.com/shop/us/maintenanceparts> available 24 hours per day, seven days per week.

- An additional fee of \$399.00 will be added for all orders placed between the hours of 10 p.m. to 8 a.m. EST, Monday through Friday, and anytime Saturday, Sunday and holidays
- A \$7.50 per order handling charge with a maximum of eight (8) part numbers per order for expedited orders
- A \$75.00 per order handling charge with a maximum of eight (8) part numbers per order for emergency orders
- Shipping charges will be applied to all expedited and emergency orders
- A service charge of \$275.00 is applied to any order placed outside regularly scheduled hours if it requires an employee to travel to process the order. This applies to emergency DPSL orders only.

IBM maintains parts locations primarily to provide maintenance parts for IBM service representatives, and stock levels are based on their requirements. In instances of unusual delays, IBM will notify the customer.

## **ORDERS REQUIRING MARKETING ASSISTANCE**

Certain orders must be submitted in writing to your local IBM sales office. Examples include:

- orders for parts for use by customers or other manufacturers to interface non-IBM brand machines to IBM defined multiple machine interfaces;
- certain parts determined by IBM to be in limited availability and orders for IBM features and model conversions.

## **RETURNS**

All parts sales are final, subject to existing warranty provisions. IBM will accept returns in accordance with such warranty provisions. In addition, IBM will accept the return of unused parts, within one month of date of purchase, when the:

- incorrect part/quantity was ordered as the result of decimal error, transposed digits, part name/number mismatch, adjacent parts catalog line items, EC level or machine configuration or an error caused by IBM,
- part/quantity furnished did not correspond to the customer order, or
- substitute part furnished does not meet customer needs

IBM will assess a 10% restocking fee on parts shipments refused and/or not picked up by the customer. The 10% fee will be based on the price of the part plus shipping and handling fees.

Acceptance of a returned part will be contingent upon presentation of the invoice or purchase order that substantiates the original transaction. The purchase of the correct part is also required concurrently when IBM provided the incorrect part in error.

### **PRICES**

Prices are subject to change without notice. Parts will be invoiced at the lower of either the selling price quoted, if the order is placed within one month of a written quotation, or the price in effect at the time IBM accepts the order.

### **LIMITED WARRANTY**

Parts sold by IBM may be new or certified used parts, which carry the same warranty as a new part. 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 that have been promptly reported by the customer as, in the customer's opinion, defective and are so found by IBM upon inspection. The replacement part assumes the warranty service status of the replaced item. **THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.**

#### **4.15.1 ACCEPTANCE**

On the date the repair parts are received by the Government.

#### **4.16 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 alternations

**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.

## **4.17 ADDITIONAL TERMS**

### **4.17.1 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.

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### **4.17.2 STORAGE MEDIA**

If for any reason the Government wishes to retain any storage media which is a part of a Machine or test equipment, (e.g., Magnetic Disks, Memory Cards, etc.), the Government shall pay IBM for all parts and labor required for IBM to remove such media and return the machine to good operating condition. Such labor and parts shall be provided as Per-Call Service and Repair Parts.

### **4.17.3 SERVICE FOR EQUIPMENT AFTER THE DATE OF WITHDRAWAL OF MAINTENANCE SERVICE**

After the discontinuance of lease, and withdrawal of Maintenance Services under an IBM agreement, IBM Hourly Service will be available for purchased machines. This depends on the availability of skills and other resources such as parts, tools, and test equipment. All the time, expense and parts associated with the IBM service provided will be charged according to the applicable IBM Hourly Service rates, terms, and conditions.

In response to each request for service, IBM will determine if an IBM service representative qualified to provide such service is available at the nearest point of service. If IBM determines that a qualified service representative is not available, IBM will, at the customer's request, dispatch a qualified service representative from another point of service, if available. The customer will be charged for all time (including travel and assist time), expense, and parts associated with all IBM services provided according to IBM's Hourly Service rates, terms, and conditions.

IBM will attempt to complete such maintenance or other services in as timely and effective a manner as possible. However, if IBM determines that it is unable to fully restore the machine to good working order or complete any such other service, IBM will notify the customer. All time, expense and parts associated with the IBM service provided will be charged to the customer. All other provisions of the Information Bulletin for Customers—IBM Hourly Service remain in effect.

### **4.17.4 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 at 1.41 Limitation of Liability.

## **4.18 MAINTENANCE OFFERINGS**

### **4.18.1 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>
2 years	1%	4 years	5%
3 years	3%	5 years	8%

### **Scope Incentive**

A Scope incentive is available if the procuring Government agency orders both maintenance and any one or more of the qualifying service offerings from the list below. The items should be included on the same delivery order, however should separate delivery orders be required, it is the Government's responsibility to notify IBM of each qualifying delivery order (maintenance and Services) available for this incentive. Should the Government procure a qualifying service as an addition to an existing hardware maintenance only order, both the maintenance and the added service would qualify for this Scope incentive. This incentive would be effective on the date the service is added and would appear on the following months' invoice.

Termination of all of the qualifying services will remove the Scope incentive from the maintenance prices. Additional funding will be required for maintenance upon the effective date of the service termination.

Scope Incentive - 2%

### **Enabled Services**

#### 7.xx IBM Operational Support Services

- Resolve for zSeries
- SoftwareXcel enterprise
- SoftwareXcel basic edition
- Support Line

### **Paperwork Reduction Incentive**

This incentive is available to the procuring Government agency when funds are included on the delivery order for Machines to be added to maintenance after their warranty expiration.

### **Guidelines**

1. The Government and IBM will review an inventory list to identify all Machines eligible for maintenance under this Schedule that are going to expire from warranty during the fiscal year.
2. The Government's fiscal year funding document would include Machines currently under maintenance as well as those expiring from warranty during the fiscal year.

3. Upon the warranty expiration date for each product identified on the order, IBM will automatically add the Machine(s) to maintenance.
4. The Government is encouraged to obligate maintenance funds for products procured during the fiscal year and which have the warranty expiring during the fiscal year to receive this incentive.

Paperwork Reduction Incentive: 3%

#### **Additional Terms and Conditions**

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

B. Base maintenance is a prerequisite to qualifying for the Scope Discount under the ServiceElite offering. IBM considers this prerequisite met regardless of whether the Machine is actually on maintenance or in a warranty status with a funded order for maintenance coverage upon warranty expiration.

C. Satisfaction Guarantee - If the Government is dissatisfied with a service procured under ServiceElite and provides written notice to IBM within 30 days of the dissatisfaction, IBM will make every effort to resolve the problem. If IBM cannot provide a remedy, and the customer is still dissatisfied, the customer will receive a credit equal to the prorated charge for the Service for the period of time they were dissatisfied. In addition the Service may be terminated without a penalty, however, the Scope incentive terms for terminating all of the qualifying services will apply.

D. Termination charges - The Government may terminate a machine or service from the Service- Elite contract with one month written notice.

Term Incentive Termination Charges: In the event of termination, the Government must provide a one month written notice to IBM, however, the following termination charges will apply if the Government agrees to a Term incentive and terminates a Machine or service during the Term. A termination charge of 2 months penalty for a 2 year term or 3 months penalty for a 3 year term will apply.

A customer may terminate a Machine or service without penalty if a Machine or service is replaced by an equivalent IBM Machine or service, or if the Machine is removed from productive use. The customer must notify IBM, in writing, indicating the replacement Machine or service. The effective date of termination must be coterminous with the replacement machine or service effective date.

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.