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CHAPTER 4. SPECIAL ITEM 811212: MAINTENANCE AND REPAIR

TERMS AND CONDITIONS

Note: The terms are in addition to the Client Relationship Agreement Services terms

During the contract period, International Business Machines Corporation (IBM) will provide for maintenance, repair parts, service for the machines and equipment listed in this Price List for entities authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I, as may be revised from time to time. 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. 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.

Whenever the Government requires that 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.

4.1 SERVICE AREAS

a. The maintenance 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 811212.

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 maintenance and/or repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) as designated by IBM. :

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 LOSS OR DAMAGE

In the event, the Contractor moves equipment to its location 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

IBM may provide repair service by either sending a part for client replacement (CRU), providing on-site repair service, or having client return the Machine to IBM for repair or exchange. IBM is responsible for risk of loss of, or damage to Machines while in IBM's possession.

4.3 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 Category.

b. Equipment placed under maintenance service shall be in acceptable condition for service meeting IBM's safety and serviceability requirements.

i. In order to determine that the equipment is in an acceptable condition for service meeting IBM's safety and serviceability requirements, 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.

ii. Costs of any repairs performed for the purpose of placing the equipment in acceptable condition for service meeting IBM's safety and serviceability requirements, shall be borne by the Contractor, if the equipment was under the Contractor's uninterrupted (no lapse in coverage) warranty or IBM's uninterrupted (no lapse in coverage) 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.

iii. If the equipment was not under the Contractor's warranty or maintenance 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 this contract.

Client may have IBM restore it for a charge, or Client may withdraw its request for maintenance Service. However, Client will be charged for any maintenance Service that IBM has performed at Client's request.



4.4. RESPONSIBILITIES

- a. For equipment not covered by a maintenance contract or warranty, IBM offers Per call repair service. This service offering is outside the scope of this GSA Schedule. A service call may be placed by calling 1-800-IBM-SERV.
- b. If the Ordering Activity task or delivery order specifies a factory authorized/certified service personnel then the Contractor is obligated to provide such a factory authorized/certified service personnel for the equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains fully responsible for the fulfillment of its obligations as documented in the complete agreement between the parties which includes IBM's warranty provisions.

4.5. MAINTENANCE RATE PROVISIONS

The Contractor shall bear costs of Machine Maintenance Service to keep Machines in, or restore them to, conformance with their official published specifications. IBM identifies services IBM does not cover as part of our Maintenance Service.

Regular Hours: IBM will provide maintenance coverage for Government-owned machines, and for IBM machines financed and leased under Special Item 532420L. The maintenance prices listed in this Price List include labor, maintenance parts, and provide for coverage during the indicated period on the pricelist (e.g., 24x7 Same Day Coverage or 9x5 Next Day Coverage).

After Hours: Should the ordering activity require the maintenance be performed outside the regular hours of the selected coverage, additional charges may be applicable. A service call may be placed by calling 1-800-IBM-SERV.

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 MAINTENANCE ORDER

Agencies may use written orders or credit card orders for ordering maintenance under this contract. Upon receipt of an order, IBM has thirty (30) calendar days from the date of receipt to



review and accept the order. An order shall be considered accepted unless otherwise notified by IBM.

Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will install or allow IBM to install mandatory engineering changes.

4.7 IBM MASTER SERVICES ATTACHMENT FOR SERVICEELITE

1. Services

IBM will provide Services, as described in this Attachment and Statements of Work (SOW), Schedules, and Change Authorizations (collectively Transaction Documents or TDs), to support Client's Eligible Machines and Eligible Programs (collectively Eligible Products).

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

Eligible Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in acceptable condition for Service, IBM will restore it for a charge or Client may withdraw its request for maintenance Service.

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

- a. improperly maintained or damaged Machines, Machines with altered identification labels, alterations, accessories;
- b. supply items, consumables (such as batteries and printer cartridges), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible;
- c. Machine installation, engineering change activity, or preventive maintenance; or
- d. service of features, parts, or devices not supplied by the Machine's manufacturer, or IBM during the performance of Service.

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

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

1.1 Warranty Service Upgrade (WSU)

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

1.2 Maintenance of IBM Machines

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

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

1.2.1 Hardware Support Extension

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

IBM will:

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

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

1.3 Maintenance of Non-IBM Machines

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

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

1.3.1 Multiple Vendor Service

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

Notwithstanding other terms of this Attachment:

- a. Charges are based on MVS Inventory. IBM will adjust the monthly charges when the inventory changes;
- b. Additions or renewals are documented in a new MVS Inventory List with the new inventory, period, and applicable charges; and
- c. Client commits to continue MVS for the specified transaction contract period. Client may not terminate MVS during the first 12 months (the Minimum Period). Thereafter, Client may terminate upon three months' written notice.

1.4 IBM Software Maintenance

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

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

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

IBM provides assistance via telephone and, if available, electronic access, only to Client's Information Systems (IS) technical support personnel. This assistance is not available to Client's end users. IBM

provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html> for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge.*

Service is provided solely for Eligible Programs that are located within the United States (USA). For calls that originate from outside of the USA: a) toll free telephone access is not available, b) “local time zone” is defined as the time zone where Client’s USA Eligible Programs are installed, Monday through Friday (excluding national holidays), c) replies or other return communication to the caller will be via a USA telephone number provided by Client or electronic means only, d) software “traps” or other tools that may be necessary to diagnose problems will be sent only to the USA Eligible Programs location, e) the diagnosis and repair of data encryption will be discussed only with personnel at the USA Eligible Programs location, and f) all support will be provided in the English language only.

1.4.1 Software Maintenance After License Fee

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

1.5. Support via USA Citizens Option

As available for selected Eligible Products and Services, Client may purchase IBM Support via USA Citizens for software or hardware in addition to maintenance. This feature provides standard IBM remote hardware and software support. IBM will provide USA Citizen remote Support agents to interact with Client. Client data submitted for diagnostic purposes may be stored and accessed outside the USA and may be viewed or handled by non-USA citizens. Client agrees not to send protected or sensitive data to IBM. IBM support via USA Citizens is available via voice support during prime shift only (8:00 a.m. to 8:00 p.m. Eastern time, Monday through Friday). Each time a Client calls IBM, Client must identify itself as a Support via USA Citizen Client. IBM will verify Client’s entitlement. For an additional charge, Client may upgrade hours of coverage to 24x7.

1.6 Machine Control Program Remote Support

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

1.7 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.

1.8 Warranty and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the applicable Transaction Document. The warranty for a Service ends when the Service ends. IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

2. Client Responsibilities

Client agrees:

- a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of inventory changes, utilizing the specified tools or systems to provide such written notice;
- b. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;
- c. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;
- d. to provide IBM with necessary information requested, and keep such information current;
- e. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;

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- f. that some Services may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. Any third party communications or connectivity charges are Client's responsibility;
 - g. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
 - h. to securely erase all non-IBM programs and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return;
 - i. that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world;
 - j. that Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Services, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures;
 - k. that Services may be performed on-site at Client's Specified Locations and off-site at IBM locations, and that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
 - l. that the terms of the Machine Code License (also provided in GSA Chapter 3 at: http://www-947.ibm.com/systems/support/machine_warranties/support_by_product.html) apply to Eligible IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
 - m. to follow the service request procedures that IBM provides, to include installing entitled Machine Code and other software updates (downloaded from an IBM web site or copied from other electronic media), and to follow IBM's (or manufacturer's) guidelines pertaining to operator responsibilities, maintenance procedures, and supplies, prior to placing a Service request;
 - n. that, with respect to Services under this Attachment, the parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased) and neither party shall be liable to the other for such Loss except liability for negligence under applicable law; and
 - o. that Client cannot resell Services or transfer Services to another Machine.

3. Charges

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

Consistent with customary commercial practice, some charges set out in this Attachment may constitute an advance payment for hardware and/or software maintenance. IBM enters into this Attachment on the assumption that the Government will exercise its power under FAR Subpart 32.2 or otherwise to approve paying on this basis.

For each transaction, Total Services charges are based on:

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

3.1 Price Protection

For each transaction package, Client selects one of the following Price Protection Options. Client's selection is specified in the Schedule for that transaction. A renewal option is predicated upon the Client providing a funded renewal order for the new fiscal year or contract term.

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

IBM's prices may be revised during the course of a year (GSA Schedule Contract prices in accordance with the GSA Contract terms), however any rate increase will not take effect until the next yearly anniversary of the start of the transaction contract period. At the start of each transaction contract year, Client is quoted and invoiced at the charge rates that are then in effect. Newly added Eligible Products and Services and changes to configurations and Services assume the charge rate that applied at the previous yearly anniversary of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period are added at the charge rate that applied on their initial availability date.

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

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

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

Prepaid Services are not subject to increases in charges (during the prepaid period) for included Eligible Product configurations and Services. Newly added Eligible Products and Services and changes to existing Eligible Product configurations and Services assume the charge rate that applied for these at transaction contract period start, with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period assume the charge rate that applied at transaction contract period start, with adjustment for the reduced prepay period. If Client elects to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), Client must provide IBM written notification (at least one month prior to the start of the renewal period), and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a monthly billing cycle under the terms set out for Option #1 above.

3.2 Re-establishment Fee

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

4. Renewal

USA Federal Clients may renew the applicable Services for the next transaction contract period by providing a funded Purchase Order prior to the end of the current transaction contract period. To avoid termination at contract period end date, IBM must receive the Order at least 30 days prior to the contract period end date.

If a renewal delivery order is received by IBM with a coverage commencement date later than the first day following the end of the current contract period end date, the Government shall promptly modify such order to reflect October 1 of the then current fiscal year or the day following the end of the contract period to avoid Re-establishment Fee. Should a Client notify IBM of their intent to renew, place maintenance/repair calls and then not provide a funded renewal delivery order with an effective day beginning on the day following the end date of the prior contract term, the agency will be charged for the Per Call Service.

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

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

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

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

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

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

5. Termination

Client has committed to continue Services for the entire transaction contract period, but may terminate Services for an Eligible Product, on 60 days' written notice to IBM, if Client permanently removes the

Eligible Machine from productive use within Client's Enterprise. Client may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated, or 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. Otherwise, if Client chooses to terminate Services not being replaced by equivalent Services, Client may do so by providing IBM 60 days' written notice, after the Services have been under contract for at least one fiscal year. Termination adjustment fees will not apply and Client will receive a credit for any remaining prepaid period associated with Services terminated under this provision.

6. Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Product or Service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its subsidiaries, contractors, and suppliers.

- a. The following amounts are not subject to the above cap: (i) third party payments referred to in the paragraph below; (ii) damages for personal injury or death resulting from IBM's negligence; (iii) for fraud by IBM; or (iv) any other damages for which liability cannot be limited by law.
- b. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will indemnify Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly: (i) notifies IBM in writing of the claim; (ii) supplies information requested by IBM; and (iii) allows IBM such opportunity as is offered by applicable laws, rules, and regulations to participate in the defense and settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice.
- c. IBM has no responsibility for claims based on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by Client's Content, materials, designs, or specifications.

7. Data Processing Protection

IBM's Data Processing Addendum at www.ibm.com/dpa (DPA) and applicable DPA Exhibit(s) apply to any personal data that the Government requires IBM to process, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679) (GDPR); ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply. Please contact your IBM representative for the applicable Data Processing Exhibit.

For Technical Support Services (TSS) and Software Subscription and Support (S&S), the applicable Data Processing Exhibit may be accessed here:

https://www.ibm.com/my-support/s/article/support-privacy?language=en_US

This Chapter 4 and applicable Transaction Documents comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. If there is a conflict among the terms of this Chapter and Transaction Documents, the terms of a Transaction Document prevail over those of both this Chapter. In entering into this Attachment, neither party is relying on any representation that is not specified in this Chapter or the documents specified in the preceding sentence, including without limitation any representations concerning: 1) levels of service, hours, or fees to provide any Service; 2) the experiences or recommendations of other parties; or 3) results or savings Client may achieve.

As used in this Chapter and its applicable Transaction Documents, “Client”, “Customer”, “you” and “your” refer to the contracting entity submitting the resulting order.

4.8 MAINTENANCE OFFERINGS

4.8.1 SERVICEELITE OFFERING INCENTIVES

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 54151S of this Schedule. These incentives are available depending on specific qualifications as identified in the Term. 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.

Effective January 1, 2019

<u>Term</u>	<u>Incentive</u>	<u>Term</u>	<u>Incentive</u>
3 years	2%	4 years	3%
		5 years	4%



6+
years 5%