

# Federal Technical Services Attachment for Technology Support Services (TSS) Offerings



Using this Technical Services Attachment for TSS Offerings (Attachment or TSA), Client may order TSS offerings from IBM. Additional details are provided in Transaction Documents. The Client Relationship Agreement for Services or equivalent referenced herein, this Attachment, and Transaction Documents are the complete agreement regarding TSS transactions hereunder. In the event of conflict, a) this Attachment prevails over the agreement, and b) a Transaction Document prevails over both the agreement and this Attachment and only applies to the specific transaction.

## 1. Services

IBM will provide Services, as described in a) this Attachment and b) Statements of Work (SOW), Schedules, and Change Authorizations (collectively Transaction Documents or TDs), to support Client's Machines and Programs that are eligible for the specific Service that Client is acquiring hereunder and are documented in the applicable TD (Eligible Machines, Eligible Programs, and 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), hours of coverage selected, applicable Services, and the contract period, in TDs. Additional details may be documented in the TD, as applicable to the specific transaction. Client may access IBM Support to place service requests by calling the Support number for Client's country, listed at <https://www.ibm.com/planetwide/> 24x7 or otherwise as directed by IBM, by voice or electronically (depending on severity), however IBM will begin servicing the request during the applicable entitled coverage days and hours. Coverage is based on the time zone where the Eligible Machine is located. IBM provides Services during the hours of service selected in the TD.

Eligible Machines must meet IBM's safety and serviceability requirements. Any IBM inspection for maintenance eligibility is subject to a charge. 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 may include:

- a. remote assistance with problem determination (whether system problems are machine or program related);
- b. on-site and remote diagnostic and remedial maintenance Service in accordance with the service level specified for the Eligible Machine in the TD;
- c. if available for Client's IBM Eligible Machines, installation of Service Programs to endeavor to:
  - (1) detect and analyze permanent errors;
  - (2) correlate temporary errors; and
  - (3) identify and report media problems.
- d. the services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
- e. the planning, scheduling, and installation of any engineering changes or field change orders required to improve the serviceability, performance, and safety of the IBM Eligible Machines;
- f. assisting Client in establishing and implementing electronic support facilities such as IBM Electronic access; and
- g. activation, for use by IBM personnel, of electronic facilities to remotely diagnose, applying fixes, and update Client's IBM Eligible Machines.

Machine Maintenance 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;
- d. service of features, parts, or devices not supplied by the Machine's manufacturer, or IBM during the performance of Service;
- e. unsuitable physical or operating environment; and
- f. any failure caused by a move of an Eligible Machine by non-IBM personnel (change of location). IBM may inspect the Machine for damage after such move, such inspection to be provided as a billable Service. IBM may restore the Machine to its official published specifications upon Client request, as a billable 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 and store 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. The images may also be modified and/or used for training and to improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

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

### **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 TD. 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.

#### **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. Response time and availability of parts may vary by location. The covered Eligible Machines, Coverage 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 TD. Newly added Machines are reflected in separate TDs. This Service does not auto renew. Subsequent periods of coverage are documented in separate TDs.

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 IBM Product Security Incident Response (PSIRT) blog found here: <https://www.ibm.com/blogs/psirt/>

Notwithstanding the terms of Section 6, IBM may withdraw Hardware Support Extension for any Machine on 30 days' written notice. Client will receive a credit for any remaining prepaid period associated with this IBM withdrawal. Client termination is addressed in Section

### **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 TD. IBM requires up to 30 days to initiate support on newly added Eligible non-IBM Machines that Client adds or relocates. 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 withdraw coverage for an Eligible non-IBM Machine due to lack of available repair parts or manufacturer technical support. Client will receive a credit for any remaining prepaid period associated with this withdrawal.

### **1.5 IBM Software Maintenance**

IBM provides software maintenance (SWMA) 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 <https://www.ibm.com/support/pages/node/733923>

Eligible Programs are listed at [www.ibm.com/services/supline/products/](http://www.ibm.com/services/supline/products/) or may be obtained from Client's IBM representative. The listing of Eligible Programs contains the last date of service for each respective release. IBM supports only current releases of Eligible Programs. It is Client's responsibility to ensure that its Eligible Programs are current when requesting Service. Availability information can be viewed at <http://www-01.ibm.com/software/support/lifecycle/>

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 Support Guide at <https://www.ibm.com/support/pages/node/733923> for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge. All Licensed units must be covered by IBM SWMA service for an Eligible Program. No partial coverage is allowed.

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

### 1.6 Support via USA Citizens Option

US Government, public sector, and commercial clients can acquire an IBM Support via U.S. Citizens or U.S. Persons Option (Option) when access restrictions, based on immigration status or citizenship, are required under applicable US law. Commercial clients must specify the reasons remote hardware and/or software support being provided may be subject to such restrictions.

For purposes of this section, US Person includes US Citizens, lawful permanent residents, and protected individuals as provided in 22 C.F.R. § 120.15. US Citizenship can be based on birth or naturalization and is evidenced by acceptable proof of citizenship per 32 C.F.R. Part 117.

IBM support for hardware or software is a mandatory prerequisite for this Option. This Option provides an IBM US Citizen or US Person contact, as applicable, to manage IBM remote hardware and software support for Client. IBM will provide remote support agents meeting the required criteria to interact with Client. Client data submitted for diagnostic purposes may be stored and accessed outside the US and may be viewed or handled by non-US Citizens or Persons. Client agrees not to send protected or sensitive data to IBM. IBM Support via US Citizens or US Persons is available via voice support, during prime shift only. Each time Client calls IBM, Client must identify itself as a Support via US Citizens or US Persons Client, as applicable. IBM will verify Client’s entitlement then transfer Client to the appropriate contact.

### 1.7 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 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 in the local time zone where Client receives Service. Hardware maintenance is a mandatory prerequisite for MCP. For an additional charge, 24x7 (every day of the year) all-severity option may be available.

### 1.8 Media Retention

Media Retention allows Client to retain defective magnetic tape, CD, DVD, USB, storage flash memory cards, solid state drives, hard disk drives, optical media cartridges, and other media as mutually agreed to by the parties (collectively, Media) replaced in the course of IBM Services. If the reported problem requires the replacement of such Media, a replacement will be supplied by IBM and the removed defective Media will be provided to Client. The Products covered under Media Retention must also be covered under IBM warranty, maintenance Service, or equivalent IBM Service. Client agrees to:

- a. Identify a Client representative to receive the retained defective Media from IBM at the time of replacement. If a Client representative is not available to receive Media at the time of replacement, IBM will retain the replaced Media as IBM property.
- b. Refrain from placing the defective drive into productive use;
- c. Dispose of all retained hard drives in compliance with applicable environmental laws and regulations;
- d. Not transfer faulty Media between non-Eligible and Eligible Machines; and,
- e. Notify IBM of any Machines configuration changes.

## 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. Any changes to contracted configuration or inventory may result in a change to original charges;
- b. as required for the specific Service, to designate the Primary Technical Contact (PTC), Client’s country-based representative to whom IBM may direct general technical information and questions regarding the Eligible Products within the environment, in order to enable effective communication with the IBM support center;
- c. to have valid licensing and subscription in place for Eligible Programs covered by a Service;
- d. 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;
- e. 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;
- f. to provide IBM with necessary information requested, and keep such information current;
- g. to access IBM Support as directed by IBM, such as by calling 1-800-IBM-SERV and providing machine type / serial or customer number or, to obtain support electronically, use the Internet web site: <http://www.ibm.com/support/>;
- h. 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;
- i. 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;

- j. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
- k. when a part return is required, Client is charged for the replacement part 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;
- l. 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;
- m. 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;
- n. 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 and maintaining its system security during the Services. 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;
- o. 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;
- p. that the terms of the Machine Code License apply. The terms are located within the Client Relationship Agreement. IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
- q. 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;
- r. that some devices have write or wear limitations as documented in the device's hardware product specifications. Once a device reaches its write or wear limitation, the device is considered end of life and therefore no longer eligible for warranty or maintenance Services. Replacement of devices that reach write or wear limitations is a Client responsibility not covered under warranty or maintenance Services;
- s. 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;
- t. that Client cannot resell Services or transfer Services to another Machine; and
- u. that IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example name, business telephone, address, email and user IDs for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent.

### 3. Charges

**For sales through IBM**, charges are based on Service selections, payment option, and any prepay period. Renewal charges are calculated at the start of each renewal period. IBM will invoice Client for the Machine/Service List on the Schedule and charges period specified in the TD. 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.

- a. no price increase announced by IBM will apply for the committed term specified in the TD; and
- b. Client will receive the benefit of a price decrease as of the stated effective date, if the price decrease is announced by IBM with an effective date during the committed term specified in the TD.

All newly added Eligible Products and Services, and changes to existing Eligible Product configurations and Services, will be charged at the then-current rate, and price protection will apply, for the term specified in the new TD.

For each transaction, total Service charges are adjusted when:

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

Increases to charges apply at the renewal of the term.

**For sales through an IBM Business Partner (BP)**, the IBM BP sets the charges and charges terms. The IBM BP may impose an additional charge for some actions (e.g., termination), or for IBM's provision of some additional services (e.g., Service upgrades) as identified in this Attachment and its associated TDs. Notwithstanding any other term of this Attachment, Client must inquire with the IBM BP regarding charges, credits, or refunds. Client's payment is made directly to the IBM BP and any credit or refund is received from the IBM BP. Any required notices (e.g., changes to inventory or termination of Service) must be provided in writing to Client's BP with a copy to IBM.

### 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.

## **Software Maintenance After License Fee**

For the Operating System and Licensed Program Products (LPPs), SWMA After License Fee (ALF) is a one-time charge to resume SWMA and applies:

- a. if there is a resumption of the SWMA after a lapse of the service; or
- b. when Client transfers a Software License for a Program not currently covered by IBM SWMA; or
- c. when Client acquires the Software License with the purchase of a used Machine, unless Client acquires SWMA within 30 days of the acquisition. For SWMA for IBM i, the most current operating system version and release is required to be installed.

The new support period begins on the date that IBM accepts Client's order.

## **5. Renewal**

Services will renew when IBM receives Client's order at least 30 days prior to the end of the current contract period. Services will terminate at the end of the current transaction contract period if a funded purchase order / contract is not received prior to the current expiration date. See Section 9 for more information for Purchase Order clients.

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 90 days' written notice. Client will receive a credit for any remaining prepaid period associated with an IBM withdrawal of Service or support.

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

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

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

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

## **7. Termination**

Client has committed to continue Services for the entire transaction contract period as documented in the applicable TD. However, Client may terminate Services for an Eligible Product if Client: a) replaces the terminated Services with equivalent new IBM Services, b) on 60 days' written notice to IBM if Client permanently removes the Eligible Machine from productive use within Client's Enterprise, c) immediately prior to the start of the fiscal year for which funds have not been appropriated, or d) 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 on 60 days' written notice.

Client will receive a credit for any remaining prepaid period associated with Services Client terminates in accordance with this provision and a separate invoice for the equivalent Services added, if applicable. Otherwise, no credit is given for Client termination during the committed term.

## **8. Data Processing Protection**

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

## **9. Purchase Order Clients**

If Client requires a purchase order for its acquisitions hereunder, the following terms apply. For purchase order clients buying directly through IBM, IBM receives Client purchase orders (PO) as documentation of Client's order for Services acquired under this Attachment. Additional or different terms in any written communication from Client (including a PO) are void. If Client requires a PO, IBM is not required to commence Services until IBM receives Client's fully executed PO. IBM is not responsible for Service delays or lapses in Service caused by PO wait time. IBM must receive a renewal PO at least 30 days prior to the contract period end date to avoid termination for non-renewal.

This 1) Technical Services Attachment for TSS Offerings (Attachment), 2) applicable Transaction Documents, and 3) the Client Relationship Agreement for Services comprise the complete Agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete Agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

Client accepts the terms of this OFFER by issuing a Contract / Purchase Order incorporating the IBM proposal, inclusive of the terms by reference.