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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.

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

### 4.1 SERVICE AREAS

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

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

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

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

### 4.2 MAINTENANCE ORDER

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

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

If the Government's warranty or maintenance Service coverage lapses for a Machine by 90 days or more beyond the end of the contracted warranty or maintenance coverage period, and the Government subsequently requests to restart the Service coverage, a Re-establishment Fee will apply. The fee is based on the number of days of lapsed coverage, up to an amount equal to 365 days of the applicable hardware maintenance service fees for the specific Machine(s). The Machine(s) must meet IBM's safety and serviceability requirements from the date of Service coverage. IBM reserves the right to inspect the Machines within one month from the start of Services. Where Machine(s) do not meet IBM's safety and serviceability requirements, the Government agrees to pay for any repairs deemed necessary to IBM prior to IBM accepting the applicable Machine for ongoing Service coverage.

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

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

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

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

Please refer to section called "Termination" 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 the 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/contract period.

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

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October 1 of the then current fiscal year. Should an agency notify IBM of their intent to renew, place maintenance/repair calls and then not provide a funded renewal delivery order to IBM, the agency will be billed for Service calls in accordance with the Per-Call Repair Services terms of this SIN.

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 (60) 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 LOSS OR DAMAGE

The Government is responsible for risk of loss of, or damage to, Machines during the period such Machines are in transit to IBM, except IBM is responsible for risk of loss of, or damage to (1) IBM-owned Machines and (2) Machines not owned by IBM while in IBM's possession or in transit, in those cases where IBM is responsible for the transportation charges. In addition, IBM will be responsible for any damage caused by IBM's negligence.

### 4.4 SCOPE

a. The Contractor shall provide maintenance for all equipment listed in the IBM GSA Maintenance product pricelist, as requested by the ordering activity during the contract term. Repair service and repair parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

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

1. In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor within one month following the date maintenance coverage commences. Such inspection is without charge to the ordering activity. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge, or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.
2. Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's uninterrupted guarantee/warranty or maintenance responsibility prior to the effective date



of the maintenance order, provided the condition of the Machine was not due to improper use or damage by the customer.

3. If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

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

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

Whenever the Government requires that maintenance service to be provided at a domestic location by persons with security clearances, the Government shall state that requirement in each order issued. IBM may, at its option, reject any such orders by written notice to the ordering office within 60 days of receipt. If a DD Form 254, DOD Contract Security Classification Specification is required for security purposes, Section 6.a of the DD Form 254 should show the same IBM address as on the delivery order for maintenance coverage.

#### **4.5 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.

#### **4.6 RESPONSIBILITIES OF THE CONTRACTOR**

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

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



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## 4.7 MAINTENANCE RATE PROVISIONS

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

### b. REGULAR HOURS

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

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

### c. AFTER HOURS

Should the ordering activity require that maintenance be performed outside of the coverage hours of the maintenance agreement, charges for the hourly service will be provided at the time of the service request.

### 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. :

## 4.8 REPAIR SERVICE RATE PROVISIONS

**A. HARDWARE MAINTENANCE CHARGES ARE LISTED BY PRODUCT AND SERVICE LEVEL WITHIN IBM'S GSA PRICELIST.**

## 4.9 IBM SERVICEELITE TERMS OF SERVICE IBM MAINTENANCE

### 4.9.1 SERVICES

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.

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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 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.

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.

## **1.2 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.

## **2. Client Responsibilities**



Client agrees:

- a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of inventory changes. utilizing the specified tools or systems to provide such written notice;
- b. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;
- c. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;
- d. to provide IBM with necessary information requested, and keep such information current;
- e. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;
- f. that some Services may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. Any third party communications or connectivity charges are Client's responsibility;
- g. to use the information obtained under these Services only for the support of the information processing requirements within Client's Specified Location;
- 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 a part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return;
- i. that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world;
- j. that Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Services, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures;
- k. that Services may be performed on-site at Client's Specified Locations and off-site at IBM locations, and that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
- l. that the terms of the Machine Code License (provided at: [http://www-947.ibm.com/systems/support/machine\\_warranties/support\\_by\\_product.html](http://www-947.ibm.com/systems/support/machine_warranties/support_by_product.html)) apply to Eligible IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
- m. to follow the service request procedures that IBM provides, to include installing entitled Machine Code and other software updates (downloaded from an IBM web site or copied from other electronic media), and to follow IBM's (or manufacturer's) guidelines pertaining to operator responsibilities, maintenance procedures, and supplies, prior to placing a Service request;
- n. that, with respect to Services, 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. Automatic Inventory Increase for Machine and Software Maintenance Services**

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

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

If the Machine is under warranty when added, Services will commence at warranty exit. If the Machine is not under warranty when added, Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start remain outside the scope of this section unless Client requests IBM add them during the transaction contract period. Services are the same as for all other Machines of the same type at the Specified Location.

### **4. Charges**

For each transaction, Total Services charges are adjusted when:

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

#### **4.1 Price Protection**

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

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

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

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

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

transaction contract period (as recalculated at the start of each renewal period), Client must provide IBM written notification (at least one month prior to the start of the renewal period), and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle under the terms set out for Option #1 above.

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.

#### **4.2 Re-establishment Fee**

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

### **5. Renewal**

USA Federal Clients may renew the applicable Services for the next transaction contract period by providing a funded Delivery 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.

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

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

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

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

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

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

### **7. Termination**

Client may terminate Services for an Eligible Product on 60 days' written notice to IBM during the first year if Client permanently removes the Eligible Machine from productive use within Client's location. Otherwise, Services must be under contract for at least one year. Client may terminate Services after the Services have been under contract for one year by providing IBM 60 days' written notice and pay no adjustment fee. Client will receive a credit for any remaining prepaid period associated with Services terminated in accordance with this provision.

Client will provide IBM written notice to terminate Services prior to the start of a fiscal year or contract option term renewal. for which funds have not been appropriated and pay no adjustment fee.

#### **4.9.2 ACCEPTANCE**

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

#### **4.10 HOURLY (PER CALL) SERVICE OF IBM MACHINES**

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

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

##### **1. Scope of Service**

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

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

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

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

Parts or Machines provided by IBM may be new or used (but will be in good working order and at least functionally equivalent to the item replaced), and become the Government's property. Replaced Machines become IBM's property and must be returned to IBM promptly or additional



charges may apply. Certain parts are provided only on an exchange basis. IBM does not accept removed parts for credit.

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

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

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

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

## **2. Order and Authorization**

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

## **3. Hours of Coverage**

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

## **4. Charges**

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

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

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Service call and the Government will be charged for all time, expenses, and parts provided up to the point of termination.

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

## **5. Warranty**

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

These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, and fitness for a particular purpose. IBM does not warrant uninterrupted or error-free operation or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. IBM warranties will not apply if there has been misuse, modification, improper maintenance, damage not caused by IBM, or failure to comply with instructions provided by IBM.

## **6. General**

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

The parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased) and neither party shall be liable to the other for such Loss except liability for negligence under applicable law.

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

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

Government is responsible for adequate content back up.

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

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



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

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

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

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

#### **4.10.1 ACCEPTANCE**

On the date repair service is completed.

#### **4.10.2 PER-CALL REPAIR CHARGES**

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

### **4.11 MAINTENANCE OFFERINGS**

#### **4.11.1 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 132-51 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%

**4.11.2 PRICE PROTECTION OPTION**

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

**FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES**

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these product at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. You will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

**FOR EACH TRANSACTION PACKAGE, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.**

Total Services charges may be adjusted whenever:

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

**4.11.3 MEDIA RETENTION OPTION**

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

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





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

#### **4.12 EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (GDPR)**

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

Regarding GDPR, you represent as follows:

- a. Either you do not require IBM to process Personal Data within the meaning of GDPR (e.g., because no processing of Personal Data occurs in the European Union (EU); no monitoring of Personal behavior takes place in EU; or your activities are otherwise exempt from GDPR); and you will communicate to IBM in writing, without undue delay, any anticipated change affecting this representation, or
- b. You agree to IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit, which apply and supplement the contract. Please contact your IBM representative for the applicable Data Processing Exhibit.