

# IBM Passport Advantage Agreement

## Attachment for Appliance Services – U.S. Government Customers

### Part 1 – General Terms

The terms of this Attachment for Appliance Services (“Attachment”) are in addition to those of the IBM Passport Advantage Agreement set forth in Appendix S to IBM’s GSA IT Schedule Contract No. GS-35F-4984H (“Agreement”), and govern the warranty and maintenance services for IBM Appliances obtained from IBM or an authorized reseller. Notwithstanding the reference to the IBM GSA IT Schedule Contract terms, any resulting order for Appliances is deemed a separate transaction and not an order issued under the IBM GSA IT Schedule. Capitalized terms not defined in this Attachment are defined in the Agreement.

#### 1. Definitions

**Customer Replaceable Unit or “CRU”** – a Machine Component part that is designated as a Customer Replaceable Unit (e.g. keyboard, memory, or hard disk drive).

**Miscellaneous Equipment Specification (“MES”)** – a change to an installed Machine Component as specified in a Transaction Document, typically (but not limited to) enhancing some or all of the resources installed as part of that Machine Component’s configuration. For instance, an MES can add processing capacity or memory or both to a server, storage capacity to a disk storage device, input/output adapters to any Machine Component, and so forth. An MES can add or remove Machine Component features, or convert a Machine Component’s features, model, or Machine Component type, but only to an extent specified in an announcement letter by IBM for the particular Machine Component.

**Service** – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer as specified in a Transaction Document. Service acquired under this Attachment is an Eligible Product.

**Specified Location** – a location within Customer’s Enterprise at which Services are provided as specified in a Transaction Document. All Services received in Specified Locations are subject to the terms of this Attachment.

**Service Period** - the period specified in a Transaction Document during which IBM provides Service under this Attachment.

#### 2. Attachment Structure

This Attachment includes **Part 1 - General Terms**.

#### 3. Scope of Services

Service for IBM Appliances, during and after warranty, is a single offering composed of specific Services for Program Components, Machine Components, and, if available, the Machine Code Component of an IBM Appliance.

A Transaction Document, if required, will be created for each Specified Location obtaining Services under this Attachment.

If there is a conflict among the terms of a Transaction Document, this Attachment, and the Agreement, those of a Transaction Document prevail over this Attachment and those of this Attachment prevail over the Agreement.

IBM will specify the Appliance, the Services that apply to it, the Service Period, additional terms and conditions, if applicable, and the Specified Location in the Transaction Document.

Consult the IBM Passport Advantage Appliance Support Handbook (“Appliance Support Handbook”) for further details on Appliance Service at: <http://www.ibm.com/software/appliance/support>.

#### 4. IBM Responsibilities

When Customer contracts for an applicable Service at a Specified Location, IBM agrees to deliver such Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or the applicable Transaction Document.

## 5. Customer Responsibilities

Customer agrees:

- a. that when an applicable Service includes IBM providing Customer with any access codes, access to electronic diagnostic tools, information databases, or other Service delivery facilities, Customer shall limit the use of these items to only those who are authorized to use them under Customer's control and only in support of Appliances and Services identified in Transaction Documents;
- b. to provide access to Customer's Appliance via modem or the Internet for remote problem diagnostics and correction. Customer is responsible for supplying the modem and telephone lines required at Customer's facility and for providing IBM temporary user access to Customer's Appliance. Customer shall ensure that these remote activities are performed under Customer's control. Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Attachment, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. Failure to provide remote access to Customer's Appliance may delay problem resolution time;
- c. to pay any communications charges associated with accessing these Services including, but not limited to, phone and Internet connection charges, unless IBM specifies otherwise in writing;
- d. that prior to making Customer's facilities, software, hardware, networks or other similar resources available to IBM, to promptly obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Services. IBM will be relieved of its obligations to perform the Services to the extent Customer's failure to promptly obtain such licenses or approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Customer's failure to promptly obtain these licenses or approvals, IBM may seek reimbursement from the Government for any costs and damages that IBM may reasonably incur in connection with such claim subject to the Contract Disputes Act and FAR 52.233-1.
- e. that certain Machine Component types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution;
- f. to follow the Service instructions that IBM provides or that may be specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>. (These instructions may include directions for installing a Machine Code Component and other Program updates either downloaded from an IBM Internet Web site or copied from other electronic media in order to maintain the currency of the Appliance); and
- g. to use the information obtained under these Services, including electronic diagnostic and service delivery facilities, only for the support of the information processing requirements within Customer's Enterprise.

## 6. Personnel

Each party shall assign personnel that are qualified to perform the tasks required of such party under this Attachment and each party is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Attachment and for the performance of the Services.

## 7. Service for IBM Appliances (during and after warranty)

### 7.1 Hours of Coverage

The hours of coverage for each Appliance, during which IBM will provide Services for such Appliance, are specified in the Appliance Support Handbook at: <http://www.ibm.com/software/appliance/support>

Unless otherwise specified, IBM provides the Services either 9 hours per day 5 days a week (Monday through Friday, excluding national holidays in the United States) during normal business hours, or 24 hours per day, 7 days per week as specified by the part number ordered by Customer. Additional hours of coverage options are available for some Services.

## 7.2 Service for IBM Machine Components (during and after warranty)

IBM provides certain types of Service to keep Machine Components in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine Component. At its discretion, IBM will i) either repair or exchange the failing Machine Component and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machine Components and may also perform preventive maintenance.

Any Upgrade IBM services must be installed on a Machine Component that is i) the designated, serial-numbered Machine Component, if applicable, and ii) at an Engineering Change level compatible with the Upgrade.

When the type of Service requires that Customer deliver the failing Machine Component to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine Component, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Machine Component while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine Component that Customer does not own;
- b. where applicable, before IBM provides Service, to --
  - (1) follow the problem determination and service request procedures that IBM provides;
  - (2) secure all programs data, and funds contained in a Machine Component; and
  - (3) inform IBM of changes in a Machine Component's location; and
- c. when Customer returns a Machine Component to IBM for any reason --
  - (1) to securely erase from any Machine Component all data, including without limitation, the following: i) Personal Data and ii) confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
  - (2) to remove all funds from Machine Components returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine Component, or data contained in a Machine Component that Customer returns to IBM; and
  - (3) IBM may ship all or part of the Appliance to other IBM or third party locations to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

### 7.2.1 Replacements

When Service involves the exchange of a part or Machine Component, the item that IBM replaces becomes its property and the replacement becomes Customer's. If, however, Customer wishes to retain the replaced part or Machine Component for security purposes, Customer agrees to pay IBM's then current purchase price for any retained parts or Machine Components. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine Component, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to ensure that the part or Machine Component is free of any legal obligations or restrictions that prevent its exchange.

Service for some IBM Machine Components involves IBM providing an exchange replacement for installation by Customer. Such exchange replacements may be i) a CRU or ii) an entire Machine Component. Customer may request IBM to install the replacement CRU or Machine Component, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine Component and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine Component must be returned to IBM. When return is required, return instructions and a container are shipped with the

replacement, and Customer must return all defective CRUs to IBM within 30 days of receipt of the replacement one.

### **7.2.2 Items Not Covered**

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machine Components damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machine Components with removed or altered Machine Component or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine Component alterations; or
- f. service of a Machine Component on which Customer is using capacity or capability, other than that authorized by IBM in writing.

### **7.2.3 Warranty Service Upgrade**

For certain Machine Components, Customer may select a Service upgrade from the standard level of warranty Service for the Machine Component, which is specified in a Transaction Document (“Warranty Service Upgrade”), during the warranty period. IBM provides Service for Appliances as described in this Attachment but charges for the Warranty Service Upgrade. Customer may not terminate the Warranty Service Upgrade or transfer it to another Appliance during the warranty period.

When the warranty period ends, the Machine Component will convert to maintenance Service at the same level of Service, if available, that Customer selected for the Warranty Service Upgrade.

Consult the IBM Appliance Support Handbook for further details on Appliance Warranty Service Upgrade options at: <http://www.ibm.com/software/appliance/support>.

### **7.3 Service for Program Components (during and after warranty)**

IBM provides Service for the Program Component of IBM Appliances during the warranty period as stated in the Program Component’s license agreement. IBM provides additional support, both during and after warranty, for Program Components as part of and as described in the Software Subscription and Support and Selected Support section of the Agreement.

Software Subscription and Support for the Program Component of an Appliance during the warranty period begins on the Date of Installation.

### **7.4 Service Options (during and after warranty)**

For certain IBM Appliances, Customer may select additional Service options that are specified in a Transaction Document (“Service Options”). IBM provides these additional Service Options in accordance with the Service descriptions contained in a Transaction Document. IBM provides Service for Appliances as described in this Attachment, but charges for Service Options.

Customer may not terminate the Service Option or transfer the Service Option to another Appliance during the Service Period.

Consult the IBM Appliance Support Handbook for further details on Appliance Service Options at: <http://www.ibm.com/software/appliance/support>.

## **8. Maintenance Service for IBM Machine Components (after warranty)**

When the warranty period ends, the warranty Service for the IBM Machine Component will convert to Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.4.4 of the Agreement: Annual Renewal of Software Subscription and Support and Selected Support, except that for purposes of this Attachment, the words “and maintenance Service” are added after the words “software subscription and support”.

As part of Appliance Maintenance and Subscription & Support Service, IBM provides Service for IBM Machine Components, as described in this Attachment, for those Appliances specified in a Transaction Document. This Service for IBM Machine Components also consists of:

- a. remotely assisting Customer in determining whether system problems are IBM Machine Component or Program Component related (problem determination);

- b. onsite and remote diagnostic and remedial maintenance Service in accordance with the type of Service for the IBM Machine Components of Appliances specified in a Transaction Document in order to keep the IBM Machine Components in, or restore them to, conformance with their Specifications, when applicable;
- c. if available for the IBM Machine Components of Appliances specified in a Transaction Document, installation of monitoring Programs to endeavor to:
  - (1) detect and analyze permanent errors;
  - (2) correlate temporary errors; and
  - (3) identify and report media problems.
 IBM retains ownership of all such monitoring Programs. Customer is licensed to run such monitoring Programs solely as required by IBM to enable IBM to provide the Services herein;
- 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 standard available Engineering Changes or field change orders required to improve the serviceability, performance or safety of the IBM Eligible Machines;
- f. assisting Customer in establishing and implementing electronic support facilities; and
- g. activation, for use by IBM personnel only, of electronic facilities to remotely diagnose, apply fixes and update the IBM Machine Components of Appliances specified in a Transaction Document.

## 9. Warranty for Service

In addition to the warranties provided in the Agreement, IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description.

## 10. Appliance Maintenance and Subscription & Support Service Period and Renewal

The initial Service Period for IBM Machine Components is the warranty period specified in a Transaction Document for the IBM Machine Component of the Appliance. Warranty Services are not renewable. When Customer obtains Appliance Maintenance and Subscription and Support Service for an Appliance, the initial Service Period for the Appliance Maintenance and Subscription and Support Service will be treated as if it is a renewal of a previous Service Period for i) the IBM Machine Component of the Appliance and ii) the Software Subscription and Support for the Program Component of an Appliance.

Appliance Maintenance and Subscription and Support Service are provided at the same level of Service, if available, that Customer was entitled to during the warranty period or the same level of Service that Customer selected for a Warranty Service Upgrade. The initial Service Period for Appliance Maintenance and Subscription and Support Service begins on the day after the warranty period for the IBM Machine Component ends. The initial Service Period for Appliance Maintenance and Subscription and Support Service ends on i) the last day of the corresponding month in the following year, unless the warranty period ends on the last day of the month, in which case the Service Period ends on the last day of the month, 12 months from the date on which the warranty period ends for the Machine Component or ii) the Customer's Anniversary date, if applicable, for a Service Period of less than 12 full months for a prorated charge, thereby aligning the Service Period for Appliance Maintenance and Subscription and Support Service with the Anniversary.

Once Customer orders Appliance Maintenance and Subscription and Support Service for an Appliance, Customer may then renew Customer's expiring Appliance Maintenance and Subscription and Support Service in accordance with the terms of Section 3.4.4 of the Agreement: Annual Renewal of Software Subscription and Support and Selected Support, except that for purposes of Services provided pursuant to this Attachment, the words "and maintenance Service" are added after the words "software subscription and support".

## 11. Reinstatement of Service

To reinstate any expired Appliance Maintenance and Subscription and Support Service, Customer must acquire IBM Appliance Maintenance Reinstatement that includes IBM Software Subscription and Support Reinstatement. IBM may inspect the Appliance at Customer's expense before reinstating Appliance Maintenance and Subscription and Support Service. If the Appliance is not in an acceptable condition for maintenance Service, Customer may have IBM restore it for a charge or Customer may withdraw its

request for Appliance Maintenance Reinstatement. IBM, at its sole discretion, determines if restoration is possible. Restoration is provided as a billable Service.

## **12. Termination and Withdrawal of a Service**

If IBM withdraws Appliance Maintenance and Subscription and Support Service for a particular Appliance, Customer understands that:

- a. IBM will not make the Appliance Maintenance and Subscription and Support Service renewal available for that Appliance; and
- b. if Customer renewed Appliance Maintenance and Subscription and Support Service for the Appliance prior to the notice of withdrawal, IBM may either continue to provide Appliance Maintenance and Subscription and Support Service to Customer for that Appliance until the end of the then current Service Period or Customer may obtain a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.