

Statement of Work

IBM Hardware Support Services

IBM Hardware Services for IBM and Non-IBM Machines

Version: July 2016

1. Subject

The following shall apply to the services relating to IBM and non-IBM products that have been specified in the Machine List.

The services described below will be provided further to the contractual terms and conditions listed on the Order Form.

2. Definitions

In this Statement of Work, the following terms have the specified meanings:

Description of the IBM Hardware Services means a document that contains information on the base IBM warranty service, the base IBM maintenance service and a definition of the service delivery methods.

This document can be found on the Internet at <http://www-05.ibm.com/services/europe/maintenance/> (Operational Guide) or will be made available to the Client by IBM on request.

Cumulated Fix Level means an accumulation of fixes or patches and programming enhancements that is used for preventive maintenance on the eligible machines.

Machine List / Service List means the part of the Order Form in which information of the eligible machines on the respectively agreed service times and service levels is summarized under the term "Service Levels". This summary contains a brief description of the service contents.

VDE Guidelines means the specifications for electrical installations defined according to the relevant DIN standards and the security standards applicable in Germany or Europe with regard to electro-technical equipment, components or systems.

3. Service Times

Service times can be chosen by IBM and the Client for provision of the services. Unless specified elsewhere, the agreed service times are stated in the Machine List.

The regular service time is from Monday to Friday, 07.00 am to 6.00 pm (excluding public and national holidays).

An additional service time can be agreed against payment of a percentage surcharge:

- Mondays to Sundays, 24 hours daily (including public and national holidays)

The Client may modify the agreed coverage hours with a written notification to IBM as follows:

1. In the case of IBM Machines, with a period of notice of one month (notification period)
2. In the case of non-IBM Machines, with a period of notice of twelve (12) months (notification period), unless otherwise specified elsewhere.

A change will take effect on the first day of the month following expiry of the notification period. The agreed service times will remain in force for at least one month in the case of IBM Machines and for at least twelve (12) months for non-IBM Machines before they can be modified again.

4. Scope of Service

The current IBM contact information for submission of the Client's service requests can be found at: www.ibm.com/planetwide

The service covers the following:

1. Support of the Client with problem determination to ascertain whether problems detected are machine or program-related problems.
2. Remote and/or on-site diagnosis and also provision of corrective maintenance services for the Eligible Machines to retain or restore their problem-free state in compliance with the official published product specifications.
3. Repair or replacement of defective parts

Moreover, the following services will be provided for Eligible IBM Machines:

1. Provision of preventive maintenance services, including realization of IBM-developed tests, adjustments and optimization measures.
2. Installation of special diagnostics programs, insofar as available for the Eligible Machines, to perform the following tasks:
 - Determination and analysis of permanent problems
 - Correlation of temporary problems
 - Determination and reporting of data media problems
3. Support by IBM production and development specialists provided IBM deems this necessary.
4. At the discretion of IBM: planning, preparing and installing technical modifications that are necessary to improve maintenance-friendliness, performance and/or security of the Eligible IBM Machines.
5. Provided IBM is responsible for installation of the machine: supporting the Client with setting up and implementation of electronic support programs, e.g. Service Agent and IBM Link.
6. Activating the electronic programs so they can be used by IBM employees for diagnosis, installation and updating of Eligible IBM Machines by remote access.

5. Out of Scope of Service

5.1. Change of location

If, during the term of the contract, machines are moved to a different installation site by non-IBM personnel (change of location), IBM shall afterwards be entitled – before continuing to provide services – to review the maintainability of the machines. This review is subject to a service charge which is charged separately on a time and material basis.

Faults caused by a change of location are not covered by the maintenance Agreement. Should faults be discovered that were evidently caused by a change of location, IBM may offer to repair these for the Client, charging the Client on a time and material basis, or to suspend the provision of services until the Client has remedied the faults itself. Should the Client correct the fault itself, IBM reserves the right to repeat the review mentioned above.

The final decision as to whether a fault was caused by a change of location or whether it is one that would normally have been covered by maintenance services lies solely with IBM.

5.2. Exclusions

The Client agrees that

1. some devices (for example solid-state devices or PCIe NVMe Flash Adapter), have read/write and / or wear limitations as documented in the hardware product specifications and / or limitations. When these devices have reached the read/write and / or wear limitations, they are not covered under maintenance services under which IBM agrees to provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the devices by description and / or part numbers and describes the terms of support or maintenance coverage applicable to them;
2. some devices have read/write and / or wear limitations as documented in the hardware product specifications and / or limitations (for example Read Intensive Solid State Drives for OpenPOWER). These devices are not covered under maintenance services under which IBM

agrees to provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the devices by description and / or part numbers and describes the terms of support or maintenance coverage applicable to them;

3. no update support of patches of the firmware or operating system will be provided for the NIP Machines covered by a maintenance agreement, unless this has also been specified in the relevant Statement of Work. This means that maintenance services will be provided for the current (not updated) release version and therefore these services will be provided for the existing firmware and operating system level, unless stipulated otherwise in the related Statement of Work;
4. any maintenance services in the course of which IBM has provided its support and maintenance services or has replaced any defective, failed or other components will not be carried out if any damage to hardware or software (such as damage to databases) has occurred due to an incorrect shutdown or booting of a Machine (e.g. due to a preceding power failure). This will also apply if the Machines in question have been restarted incorrectly after a shutdown. It will be presumed that such damage has been caused due to an incorrect operating environment of the Machine (e.g. current fluctuations) in such cases. These repairs will be carried out by IBM on a time and materials basis unless the equipment concerned has been explicitly identified by means of technical descriptions and/or part numbers under an agreement on consulting and support services to be concluded separately and if the terms for support or maintenance services have explicitly been stipulated differently. However, the Client is entitled to demonstrate that the damage which has arisen has not been caused by an incorrect operating environment (e.g. current fluctuations during or after a power failure) by enlisting the services of an expert at the Client's own expense. The Client may use all the components that IBM has replaced against payment of a reasonable charge for the said purpose. The Client will be obliged to inform IBM that it wishes to keep the components in question *before* the repair work in question has been completed. If the Client fails to do this, the relevant components will be disposed of at IBM's premises or passed on for reprocessing and will no longer be available for examination.

6. Client Responsibilities

The Client will

1. inform IBM no later than four [4] weeks prior to the Service Start Date about the configuration and/or processing capacities of the Eligible Machines covered by the Service and within four [4] weeks about all the changes to the Eligible Machines installed at the Client's site carried out during the maintenance period and will also inform IBM if any machine types have been added or removed at a selected place of installation, or if any new places of installation are to be set up. The term 'configuration' means the details relating to the configuration of a machine (such as the CPU, data media, feature or storage cards, specifying the respective type, model and the quantity). The agreed Service Levels will apply subject to an advance notice period four [4] weeks after the date on which the details of the configuration of a machine have been communicated. If the details of a machine configuration are not available, it must be expected that the maintenance services will be restricted. Such restrictions may lead to the Service Levels being exceeded and may also result in additional maintenance costs. The Client will not be entitled to claim the payment of a penalty/contract penalty or damages if the Service Levels have not been fulfilled in such a case;
2. inform IBM no later than four [4] weeks prior to the Service Start Date about any machines to be included in the relevant agreement;
3. provide IBM with all requested information, insofar as it concerns provision of the services, and inform IBM about all changes;
4. declare consent to the fact that electronic access to the IBM support center and specific databases possibly calls for conclusion of a separate Agreement, which might incur additional charges;
5. in the case of a machine element to be replaced, remove the removable data media and also changes and attachments that have been added without the consent of IBM. Services on Machines will be provided only on the unmodified part of a machine, i.e. it must be in the condition it was in when placed under maintenance;
6. If a Machine is returned, regardless of the reasons for this:
 - a) remove any cash from the Machine (e.g. from the cash drawer at a cash desk)

- b) delete all programs not provided by IBM with the Machine, as well as any data, including (1) personal data, and (2) confidential information or any other protected information of the Client. If it is not possible to remove or delete such personal data, the Client undertakes to convert this information (e.g. by means of anonymization of the relevant personal data), so that this data will no longer be considered as personal data under applicable law. The provisions (Processing of Data by Order of the Client) defined in the "GTC Services", which can be found at the following web link: <http://www.ibm.com/terms/de>, will apply accordingly, if the deletion of the relevant data is carried out by IBM or any of its authorized agents.
- 7. Neither IBM nor any of its authorized agents will be liable for any cash left in the cash drawer of a cash desk or for any other assets, as well as any programs that IBM has not provided with the original device, or for any unsecured data
- 8. in the case of non-IBM Machines, where warranty claims against the manufacturer still apply, IBM will assert these claims on behalf of the Client. The Client will authorize IBM to do this by signing the Order Form.
- 9. provide a secure storage space for all parts stored at the Client's chosen Installation Location;
- 10. grant IBM service technicians sufficient and easy access to this save storage space so that they can immediately store, test and remove the spare parts, provided they deem this as necessary;
- 11. when the service enquiry is made, notify IBM of safety faults and describe whether the machines are in an unsafe state (with risk of injury to the technician, e.g. no currently positive BGV A 3 check). Depending on the type of safety fault, IBM shall at its discretion either send 2 technicians to work with the on-site team or compel the Client to provide an employee so that the work is not completed alone. In the event that IBM must send 2 technicians, the additional costs will be borne by the Client;
- 12. ensure that systems covered are at the most recent cumulative fix level;
- 13. ensure that a Client employee is always in a close proximity to the respective IBM technician, so that help can be provided at any time if an accident has occurred and no independent work by the Client's employee will be performed;
- 14. ensure that the IBM technician can begin repairing defective machines within 30 minutes after arrival at client site. Should the waiting time exceeds 30 minutes until IBM can start repairing the machines, IBM may charge the client for it on on a time and material basis.
- 15. make sure that the Client's Machines have been properly connected in accordance with the applicable VDE Guidelines and that appropriate protection measures against excess voltage have been taken;
- 16. declare consent to the fact that the Client will be responsible for any loss or damage of parts
 - a) during the period of storage;
 - b) IBM will separately invoice the Client for missing spare parts; this will also apply to spare parts that have been used up or damaged; and that
 - c) parts will remain the property of IBM.

7. Charges

The service charges will be calculated on the basis of the hardware and their billable hardware feature codes of the selected Eligible machines acquired by the Client.

For Machines identified as "Usage Plan Machines" in the Attachments to this SoW, the maintenance charges will include a basic charge plus a usage-based service charge. This usage-based service charge will be calculated on the basis of the usage units incurred, multiplied by the relevant applicable maintenance charges. The monthly consumption of usage units for the period from the Service Start Date to the end of the respective calendar year will be estimated by the Client and IBM by mutual consent. At the end of the respective calendar year and upon termination of the relevant agreement, the Client will read the counter of a Machine and will notify IBM of the total number of usage units incurred. IBM will then either issue a credit note or send an additional invoice to the Client for the difference between the maintenance charges invoiced already and the amount of the maintenance charges corresponding to the actual consumption of usage units. The average consumption of usage units determined in the respective calendar year will be used as the basis of calculation of the maintenance charge to be invoiced in the next calendar year. However, if the provision of the Services has only started in the 2nd half of any calendar year, the estimated consumption of usage units will also be taken as the basis of calculation of the charges due in the next calendar year.

Otherwise, the rules from the other conditions of contract listed in the order form are applicable.

8. Term and Termination of the Service for Non-IBM Machines

The service for a non-IBM machine has a minimum term of one year and is automatically renewed by one year in each case unless it is terminated with a period of notice of three (3) months prior to the end of the year of contract that applies for the machine in question. Earlier termination, leading to shortening of the renewed year, is not possible.

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