IBM Hourly Service

For Machines located in the United States, IBM provides hourly services not covered by another IBM agreement, as described in this Information Bulletin (Service). By ordering or receiving Service, the owner or lessee in possession of the Machine (Client): i) authorizes IBM to provide billable Service under the terms of this Information Bulletin, and ii) agrees to pay all charges for Services performed (including time and materials). Additional or different terms in any written communication from Client (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). Service may also include Machine installation, relocation, or discontinuance (including planning).
   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 Client’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 Client’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 Client 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 Client 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**
   Client orders IBM Hourly Service by contacting IBM at 1-800-IBM-SERV (426-7378). Where Client is the lessee of a Machine, Client agrees to obtain authorization from the owner in advance. A third party requesting Service for Client 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**
   Client is required to provide IBM a credit card, a funded purchase order, or other financial instrument mutually agreed to by IBM and Client, prior to the start of Service. Any change to this Information Bulletin, including any special Client authorization or reporting procedures, requires IBM’s written agreement in advance.
   Invoices are due upon receipt. Service is provided at IBM’s then generally available hourly service rates 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 a Client at any time elects to terminate a Service call, the IBM representative will end the Service call and Client 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 Client concurs, additional charges will apply for additional individuals.
5. Taxes
Client agrees to pay all applicable customs or other duty, tax, levy, or fee imposed by any authority resulting from Service.

6. 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 Client 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 of 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.

7. Limitation of Liability
IBM’s entire liability for all claims related to the Service will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid for the Service transaction that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. The following amounts, if IBM is legally liable for them, are not subject to the above cap: i) damages for body injury (including death); ii) damages to real property and tangible personal property; and iii) damages that cannot be limited under applicable law.

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

Neither party will bring a legal action arising out of or related to this Information Bulletin more than two years after the cause of action arose.

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.

Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.

Before IBM exchanges a Machine or part, Client 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.

Client is responsible for adequate content back up.

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

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client'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.

Client 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. 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.

Client agrees to i) maintain, and provide upon request, records, system tools output, and access to Client’s premises, as reasonably necessary for IBM and its independent auditor to verify Client’s compliance with this Information Bulletin for IBM Hourly Service and the License Agreement for Machine Code, and ii) promptly order any required entitlements, pay additional charges at IBM’s then current rates (including uses in excess of Client’s authorizations or entitlements, associated maintenance or software subscription support), and other liabilities determined as a result of such verification. These compliance verification obligations remain in effect during the term of the License Agreement for Machine Code License and for two years thereafter.

Both parties agree to the application of the laws of the state of New York to this Information Bulletin, without regard to conflict of law principles. If any provision of the Information Bulletin is invalid or unenforceable, the remaining provisions

IBM reserves the right to change, modify or withdraw its offerings, policies and practices or this Information Bulletin at any time without notice, provided that such changes will only apply to Services after the effective date of the change.