

# Remarketed IBM Maintenance Services Agreement



## Machine and Maintenance Services Description

SPS VAR, LLC (We) agree to provide a Machine and IBM Maintenance Services (Services) as described in an Attachment to our Customer (You) under the terms of this Agreement. We do not provide Services under the terms of your purchase order.

You have committed to continue Services for the entire contract period. During any subsequent renewal period, you may terminate Services on 90 days written notice to us if you return all equipment provided to us and do not replace it with similar equipment to serve a similar function. You will receive a credit for any unused period beginning at the end of 90 days from notice or receipt of equipment, whichever is later.

Each of us agrees that if a feature, upgrade, or conversion is installed on the Machine while it is under this Maintenance Services Agreement, 1) an additional charge may apply and 2) the feature, upgrade, or conversion is subject to the remaining portion of the contract period.

You agree that any machinery provided for your use remains the property of SPS VAR, and that it will be returned in good working order upon contract expiration or renewal period expiration. SPS VAR will arrange for the return and bill you for those shipping costs. You agree to pay for the return shipping costs. You are responsible for insurance on the equipment while installed at your facility to benefit SPS VAR in the case of any loss. Loss value will be equal to replacement value.

### **Initial 36 Month Hardware Machine, Maintenance, Block of 10 Service Hours and Total Care Recovery – DR Agreement - Term 12/01/2018 – 11/31/2021**

<b>2018 Payment Due By: 12/01/2018</b>	<b>\$ 15,750.00</b>
<b>2019 Payment Due By: 12/01/2019</b>	<b>\$ 15,750.00</b>
<b>2020 Payment Due By: 12/01/2020</b>	<b>\$ 15,750.00</b>

#### **Renewal Option**

<b>2021 Payment Due By: 12/01/2021</b>	<b>\$ 13,250.00</b>	<b>Notice Due by 09/01/2021</b>
<b>2022 Payment Due By: 12/01/2022</b>	<b>\$ 11,750.00</b>	<b>Notice Due by 09/01/2022</b>

#### **Archive Machine Option**

**\$ 5,750.00 Hardware and Maintenance only No Service hours or Disaster Recovery**

**Machine Provided and Maintained: IBMi 4-Core Power7+ Server model 8202-E4D. Machine will be stable at V7r2 and will not be upgraded or changed during the period of this agreement.**

This Agreement, the Pricing Attachment and Additional Terms on page 2 form our complete agreement regarding these Maintenance Services and replace any prior oral or written communication between us. By signing below, both of us agree to these terms.

*Agreed to: (Customer legal name & address)*

**Village of Wellington**  
12300 West Forest Hill Blvd  
Wellington, FL 33414

*Agreed to:*

**SPS VAR, LLC**  
P.O. Box 8869  
Atlanta, GA 31106

By \_\_\_\_\_  
Authorized Signature

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Agreement Number: 2018110701LBB

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## Additional Terms

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### Prices and Payment

The amount payable for Maintenance Services is a fixed price. Depending on particular circumstances, as described below under Maintenance Services, additional charges may apply. We will inform you in advance whenever additional charges apply. Maintenance Charges are due within 30 days from the invoice date. Amounts past due are subject to a late payment charge of 1.5% per month. You agree to pay accordingly. You also agree to pay applicable sales taxes or to supply exemption documentation.

### Types of Maintenance Service for Machines

When a type of service involves the exchange of a Machine or part, the item replaced becomes IBM property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. Before IBM exchanges a Machine or a part, you agree to remove all features, parts, and attachments not under our service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

### Maintenance Services

IBM will restore the Machine to good working order or exchange it, based on the type of service selected for the Machine. IBM may inspect a Machine within one month following the date Maintenance Services begin. If the Machine is not in an acceptable condition for service, you may have IBM restore it for a charge. Alternatively, you may withdraw your request for Maintenance Services. However, you will be charged for any Maintenance Services which we have performed at your request. Maintenance Services do not cover accessories, supply items, and certain parts, such as batteries, frames, and covers. In addition, Maintenance Services do not cover service of a Machine damaged by modification, misuse, accident, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of Machine or parts identification labels, or failure caused by a product for which we are not responsible. Unless otherwise agreed, Maintenance Services do not cover service of Machine alterations.

### Warranty

We warrant that IBM performs Maintenance Services in a workmanlike manner. THIS WARRANTY REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. We do not warrant uninterrupted or error-free operation of any Maintenance Service.

### Limitation of Liability

In the unlikely event, because of a default on our part or other liability, you are entitled to recover damages from us, in each instance, regardless of the basis on which you are entitled to claim damages from us, we are liable only for an amount no greater than the sum of all payments you have made. Under no circumstances are we responsible to you or third parties for 1) loss of, or damage to, your records or data; or 2) special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if we are informed of their possibility.

### Disputes

The laws of the State of Florida govern this Agreement. Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, shall be settled in the appropriate court in Palm Beach County, Florida.

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