



IBM Customer Agreement

Attachment for Multivendor Information Technology Recovery Services

You accept the terms of this IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services ("Attachment"), which are in addition to those of the IBM Customer Agreement or any equivalent agreement in effect between you and IBM ("Agreement"), by signing this Attachment.

IBM provides Multivendor Information Technology Recovery Services ("Services") to assist you in preparing for and responding to an Outage Emergency at a Covered Address. As part of these Services, IBM provides equipment and software, support services, telecommunications services, and a facility, in combinations you select and as documented in a Supplement, to assist you in your performance of your critical business and information processing activities in the event of an Outage Emergency.

1. Definitions

Configuration – the equipment, software, workspace, and telecommunications services, so designated in a Supplement. What IBM provides may not be identical to the Configuration, however, it will be compatible with, and will offer capacity and functionality equivalent to or greater than that of the Configuration.

Covered Address – a location where information processing is performed by or for you, and is identified in a Supplement. This address may represent your facility in a single building, or a physical campus.

Outage Emergency (also called "Disaster") – any unplanned interruption of your critical business and information processing at a Covered Address, resulting from causes beyond your control, that significantly impairs your ability to operate your business.

Recovery Site – IBM provided facilities used for Recovery Exercises and your recovery. When applicable, IBM will designate in the Supplement a Primary Recovery Site which, if available, is the site we intend you to use.

2. IBM Responsibilities

Acceptance of Subscription and Supplement

IBM accepts your order for Services ("Subscription") by issuing a Supplement for the Configuration. Both parties must sign the initial Supplement for a Configuration for the Supplement to be effective.

If the Supplement for a Configuration includes equipment not currently available at the Primary Recovery Site, and IBM cannot provide compatible equipment of equivalent or greater capacity and functionality, IBM will initiate its acquisition process for such equipment immediately following signing of the Supplement. If such equipment is not yet installed when you declare an Outage Emergency, IBM will use commercially reasonable efforts to provide alternate equipment, or the Configuration at another facility.

A request to change any detail of a Supplement requires one (1) month's written notice. If IBM agrees, IBM will confirm the change by sending you, for your signature, a revised Supplement specifying the effective date of the change and the adjusted charge. IBM will not unreasonably withhold its agreement. The adjusted charge will not be less than the Minimum Total Monthly Charge specified in a Supplement. Although IBM requests your signature on a revised Supplement, either your signature or your payment of the adjusted charge or your use of the Services, whichever occurs first after IBM sends you a revised Supplement, constitutes your acceptance of that Supplement.

Recovery Exercise Time

You may request that IBM provide time for you to test your recovery plan, procedures and operation (referred to as "Recovery Exercise" or "Exercise"). For each Recovery Exercise, IBM will make the Configuration available to you in contiguous four-hour blocks, scheduled as we mutually agree. You may schedule the number of hours and Exercises as specified in the Supplement (collectively called "Recovery Exercise Allowance"). You agree that IBM may reschedule your Exercise to serve another customer who has declared an Outage Emergency. If you request additional hours or additional Exercises, beyond your annual Recovery Exercise Allowance, IBM will provide it on an "as available" basis for a charge that is specified in the Supplement.

Recovery

When you notify IBM that you are experiencing an Outage Emergency by calling the toll-free number IBM provides ("Declare"), IBM will begin to prepare, without delay, Recovery Site facilities for your use. You may have immediate access to the Recovery Site IBM makes available to you. IBM will use commercially reasonable efforts to provide the Configuration as soon as you are ready to use it and will provide it no later than twenty-four (24) hours after you Declare.

IBM will provide the Configuration for your use at the Recovery Site for a maximum of six (6) consecutive weeks after you Declare. You will have priority access to the Configuration over any customer, except one who has Declared before you.

Technical and Operational Support for Recovery and Recovery Exercise

IBM provides a single point of contact who will coordinate support activities prior to, during, and following an "Event" (an Exercise or your recovery). Prior to an Event, IBM will assist in planning and preparation as described in documentation IBM will provide. IBM will create connectivity descriptions and, where applicable, a document that defines how the equipment in your Configuration is mapped to the equipment IBM provides. Prior to the Event, IBM will set up and check out physical connectivity of the equipment to verify that what IBM provides is connected as set forth in the documentation. During an Event, personnel on-site and on-call will assist with problem determination related to the hardware and software IBM provides with the Configuration, and IBM will track issues and problems related to IBM's provision of services during the Event. Following an Event, IBM will participate in a review, at your request. For an Exercise as well as your recovery, a contact person IBM provides will be on-site or on-call twenty-four (24) hours per day from the time you Declare or begin your Exercise until the Event ends.

IBM will provide a work area, as specified in a Supplement, for your use.

Product Removal

IBM will give you six (6) months' written notice of its intent to no longer provide an item in your Configuration and also not provide a compatible substitute item that offers equal or greater capacity and functionality. In such circumstance, you may terminate the applicable Supplement, upon three (3) months' written notice, within one (1) year of such notification.

3. Your Responsibilities

You agree to:

- a. notify IBM that you are declaring an Outage Emergency by calling the toll-free number IBM provides;
- b. be responsible for determining, on a continuing basis, whether the Configurations specified in the Supplements in effect between you and IBM are sufficient for you to meet your requirements for continuing your business and information processing activities in response to an Outage Emergency at each Covered Address;
- c. be responsible for providing during an Event any equipment, software, workspace, and/or telecommunications services you need that is not included in the Configurations specified in the Supplements in effect between you and IBM;
- d. supply all personnel and appropriately licensed software necessary for an Event, unless otherwise specified in a Supplement;
- e. maintain your system software and operating system(s) that you intend to use for an Event, at a release level for which the manufacturer then currently provides support. Your ability to make use of the Configuration IBM provides may be dependent on your fulfillment of this responsibility;
- f. furnish supplies, materials, and storage media necessary for your Event;
- g. follow procedures and instructions, including those for safety and security, IBM provides you for: (a) scheduling and preparation for Recovery Exercises, (b) an Event, and (c) use of the Recovery Site; and,
- h. remove your data and software from the Configuration following an Event.

4. Contract Period

The Start Date and End Date of the Contract Period for a Subscription and the Supplement Effective Date are set forth in the Supplement.

Renewal

IBM will issue you a renewal Supplement or give you written notice of IBM's intention not to renew a Subscription at least three (3) months before its End Date. If you intend to renew a Subscription, you must notify IBM in writing at least one (1) month prior to the End Date.

Termination

You have the right to terminate a Subscription before its End Date only if IBM has failed to cure, after you have given written notice and reasonable time for IBM to do so, a material breach of IBM's obligations with respect to such Subscription.

5. Charges

Total Monthly Charge

You agree to pay the Total Monthly Charge, specified in a Supplement, for each month of a Contract Period.

Recovery Charges

In addition to the Total Monthly Charge, you agree to pay an Initial Recovery Charge and a Daily Recovery Charge specified in a Supplement. The Initial Recovery Charge is incurred when IBM confirms to you that IBM has scheduled a Recovery Site for your use in response to your declaration of an Outage Emergency. For this charge, IBM makes the Configuration available to you for up to the number of days specified in a Supplement. Thereafter, for each day, or part thereof, that IBM provides you the Configuration, the Daily Recovery Charge applies.

Additional Charges

You agree to pay:

- a. any associated charges for telecommunications services you select as specified in a Supplement;
- b. charges for additional hours and Exercises you schedule beyond the annual Recovery Exercise Allowance specified in the Supplement;
- c. charges for operational and technical assistance beyond that described in this Attachment and the applicable Supplement, that IBM agrees to provide during an Event, in response to your written request and authorization;
- d. charges for miscellaneous expenses you incur while at a Recovery Site, for use of items such as supplies, materials, storage media or for use of office equipment. Both Parties agree that only those charges for which you have provided prior approval in writing specifying quantity and cost of miscellaneous expenses will be billed to you; and
- e. charges for your use of telephone and facsimile machines.

Price Changes

IBM will not increase the charges for the Configuration and terms specified in a Supplement during the first year of a Contract Period. Thereafter, on subsequent anniversaries of the Start Date of the Contract Period, IBM may increase such charges by up to five percent (5%).

6. Limitation of Liability

If IBM is unable to provide you recovery services as described in the subsection "Recovery" above, and you elect not to accept such services when IBM can provide them, IBM will pay you an amount equal to the Total Monthly Charges you paid under the applicable Supplement for the preceding twelve (12) months. This is your exclusive remedy for failure to provide you such recovery services.

In any other circumstance in which, because of a default on IBM's part or other liability, you are entitled to claim damages from IBM, the terms of the Agreement apply.

7. Other Terms

IBM will follow reasonable security practices and procedures to protect your physical assets while they are in Recovery Sites. Such protection includes providing security at the Recovery Site that allows access only to those persons authorized either by IBM or by you and IBM. This security will be in place twenty-four (24) hours a day, seven (7) days a week.

You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information

wherever they do business, in connection with IBM Products and Services or in furtherance of IBM's business relationship with you.

You agree to be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel; and be responsible for the identification of interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which IBM will have access to during the Services including applicable data privacy, export, and import laws and regulations. It is your responsibility to ensure the systems, applications, programs, and data meet the requirements of those laws, regulations and statutes.

Prior to you making facilities, software, hardware, networks or other similar resources available to IBM, you agree to obtain any licenses or approvals for IBM or its subcontractors to use, access, and modify such resources to the extent necessary for IBM to perform the Services, including the development of any Materials. IBM will be relieved of its obligations to the extent your failure to promptly obtain such licenses or approvals adversely affects IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of your failure to obtain these licenses or approvals, you agree to reimburse IBM for any costs and damages IBM may reasonably incur in connection with such claim.

Notices

All written notices required by this Attachment to be sent to you will be addressed to the customer signatory below, unless and until you inform IBM in writing of a different person and address to which such notices must be sent. All written notices to IBM must be sent to the IBM addressee identified in the applicable Supplement. Any such notices may be sent by electronic means and, as such, will be considered a signed writing. Both you and IBM agree to inform each other of any changes to addressee information within one (1) month of such change.

In entering into this agreement, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or this Attachment, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under this Attachment.

Each of us agrees that the complete agreement between us about Multivendor Information Technology Recovery Services consists of 1) this Attachment and its associated Supplement(s) and other Transaction Documents, if any, and 2) the Agreement identified below.

Agreed to:
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Agreed to:
International Business Machines Corporation

By: _____
Authorized Signature

By: _____
Authorized Signature

Name: _____
(Type or Print)

Name: _____
(Type or Print)

Title: _____
(Type or Print)

Title: _____
(Type or Print)

Date: _____

Date: _____

Customer Number: 5142941

Agreement Number: HQ12291

Enterprise Number: 5143106

Attachment Number: B000715

Address:

Address:
Attn: BCRS Contract Operations
IBM Corporation
PO Box 700
Suffern, NY 10901-0700

Telephone: _____

e-mail: ibmbcrs@us.ibm.com

e-mail: _____