



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER:
 ISCJ0031

PAGE:
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
 KRISTA FERRELL
 304-558-2596

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

IBM
145 Summers St - Suite 200
Charleston, WV 25301

SHIP TO

DEPARTMENT OF ADMINISTRATION
 IS&C - DATA CENTER MANAGER
 BUILDING 6, ROOM B110
 1900 KANAWHA BOULEVARD, EAST
 CHARLESTON, WV
 25305-0135 304-558-5914

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
09/04/2008				

BID OPENING DATE: 09/11/2008 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		920-20		
<p>DISASTER RECOVERY SERVICES AGREEMENT</p> <p>REQUEST FOR QUOTATION</p> <p>THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY THE WEST VIRGINIA OFFICE OF TECHNOLOGY, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH DISASTER RECOVERY SERVICES FOR THE MAINFRAME AND NETWORK BACKBONE SUPPORT PER THE ATTACHED SPECIFICATIONS.</p> <p>TECHNICAL QUESTIONS CONCERNING THIS PROJECT MUST BE SUBMITTED IN WRITING TO KRISTA FERRELL IN THE WEST VIRGINIA STATE PURCHASING DIVISION VIA MAIL AT THE ADDRESS SHOWN IN THE BODY OF THIS RFQ, VIA FAX AT 304-558-4115, OR VIA EMAIL AT KRISTA.S.FERRELL@WV.GOV DEADLINE FOR ALL TECHNICAL QUESTIONS IS 09/09/2008 AT THE CLOSE OF BUSINESS. TECHNICAL QUESTIONS RECEIVED, IF ANY, WILL BE ANSWERED BY ADDENDUM AFTER THE DEADLINE. QUESTIONS CONCERNING THE PROCESS BY WHICH A VENDOR MAY SUBMIT A BID TO THE STATE OF WEST VIRGINIA ARE NOT CONSIDERED TECHNICAL QUESTIONS AND MAY BE SUBMITTED AT ANY TIME PRIOR TO THE BID OPENING DATE AND IN ANY FORMAT.</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS</p>						

RECEIVED
 2008 SEP 11 P 1:19
 PURCHASING DIVISION
 STATE OF WV

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE 857-248-8331	DATE 9-11-08
TITLE ITSM	FEIN 13-0871985	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: {a} conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; {b} be merchantable and fit for the purpose intended; and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA Business Associate Addendum -** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **West Virginia Alcohol & Drug-Free Workplace Act:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."



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<p>NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE</p>						

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SPENDING UNIT

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<p>APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</p>						

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<p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p>EXHIBIT 10</p> <p>REQUISITION NO.:</p> <p>ADDENDUM ACKNOWLEDGEMENT</p> <p>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</p> <p>ADDENDUM NO. S:</p> <p>NO. 1 <i>9-11-08</i></p> <p>NO. 2 XXXXXX</p> <p>NO. 3</p> <p>NO. 4</p> <p>NO. 5</p> <p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.</p>						

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VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE INFORMATION ISSUED IN WRITING AND ADDED TO THE SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.

Krista Ferrell
 SIGNATURE
 IBM
 COMPANY
 9-11-08
 DATE

REV. 11/96

VENDOR PREFERENCE CERTIFICATE

CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).

A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:

() BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR

(X) BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORA-

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>K. Ferrell</i>	TELEPHONE	DATE 9-11-08
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<p>TION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD- QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDO WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID; OR</p> <p>() BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST</p>						

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SIGNATURE <i>R. G. Miller</i>	TELEPHONE	DATE 9-11-08
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<p>75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX & REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED, OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: <i>IBM</i></p>						

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TITLE _____ FEIN _____ ADDRESS CHANGES TO BE NOTED ABOVE

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DATE: 9-11-08
 SIGNED: *Ridg. Mills*
 TITLE: *ITSM*

* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)

NOTICE

A SIGNED BID MUST BE SUBMITTED TO:

DEPARTMENT OF ADMINISTRATION
 PURCHASING DIVISION
 BUILDING 15
 2019 WASHINGTON STREET, EAST
 CHARLESTON, WV 25305-0130

THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:

SEALED BID

BUYER: KRISTA FERRELL-FILE 21

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SIGNATURE: <i>Ridg. Mills</i>	TELEPHONE:	DATE: 9-11-08
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PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						

CONTACT PERSON (PLEASE PRINT CLEARLY):						

***** THIS IS THE END OF RFQ ISCJ0031 ***** TOTAL:						\$ 129,132.00
(Annual Subscript						\$ 98,232.00)

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STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY: The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information ~~or other confidential information~~ gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing,

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: IBM

Authorized Signature: [Signature] Date: 9-11-08

IBM Global Technology Services



September 11, 2008

Ms. Krista Ferrell
State of West Virginia
Department of Administration
Purchasing Division
Building 15
2019 Washington Street, East
Charleston, WV 25305

Dear Ms. Ferrell,

IBM is pleased to provide prices and services in response to the State of West Virginia Office of Technology Request for Quotation ("RFQ") for Disaster Recovery Services for the Mainframe and Network Backbone Support, dated September 4, 2008

We propose that should IBM be selected as the successful bidder, the general terms and conditions for the resulting contract shall be governed by the terms and conditions of the Master Customer Agreement No. JM 71665 ("ICA") and Addendum to ICA Documents ("First Amendment"), each dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993, and the Second Addendum Amendment to ICA ("Second Amendment") dated May 9, 2008 and approved by the State of West Virginia Attorney General on May 22, 2008, as attached hereto. IBM considers the ICA, First Amendment and Second Amendment to represent the majority of specific exceptions to the terms and conditions contained in the RFQ

In addition, the terms and conditions that will govern the specific services proposed will be:

- 1) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services (Z125-8306-06) ("the Attachment") (copy enclosed); and
- 2) various Transaction Documents which will specify the details associated with a Subscription(s) (including Configuration details, pricing, contract period, etc.), and any standard IBM amendments to the Attachment that are applicable to the particular options you decide to select for the Subscription(s)

Upon your notification of your intent to award the Disaster Recovery Services for the Mainframe and Network Backbone Support project to IBM, IBM anticipates that a mutually agreed upon Attachment for Multivendor Information Technology Recovery Services will be negotiated prior to commencing any work and will represent IBM's sole and exclusive response to this RFQ. Some customers do have unique contractual requirements and we are always willing to negotiate modifications to the terms and conditions on a case-by-case basis to be made at the transaction level. However, minor modifications involve simple wording changes which are straight-forward and do not affect the price of a transaction; material modifications that substantially change the terms and conditions would affect the price. Accordingly, if the State of West Virginia awards us the business, we are willing to negotiate modifications to the proposed terms and conditions, with the understanding that material modifications may affect the price. This response is valid for a period of 90 days following submission.

IBM has designed our business continuity and recovery business around requirements identified by years of experience providing data center management. Our geographically dispersed recovery sites are built and managed to combine optimal emergency response across multiple IT hardware and software platforms.

IBM Business Continuity and Resiliency Services is uniquely prepared to address your exercise and event requirements.

Should you have any questions pertaining to our services or this RFQ response, please don't hesitate to contact me. IBM has earned the trust and confidence of thousands of clients around the world. Every time a client has had to put the livelihood of their business in our hands, we have proven that our recovery processes are successful. We look forward to earning the State of West Virginia's trust and confidence as your continuity and recovery services provider.

Yours sincerely,

Kathy Johnson

Kathy Johnson

IBM Account Manager, IBM Business Continuity and Resiliency Services

612-486-4149

kathyjohnson@us.ibm.com



IBM Response to the West Virginia Office of Technology, RFQ Number ISCJ0031 for Disaster Recovery Services

Presented to West Virginia Office of Technology

By Kathy Johnson
IBM Business Continuity and Resiliency Services
612-486-4149
kathyjohnson@us.ibm.com

September 11, 2008

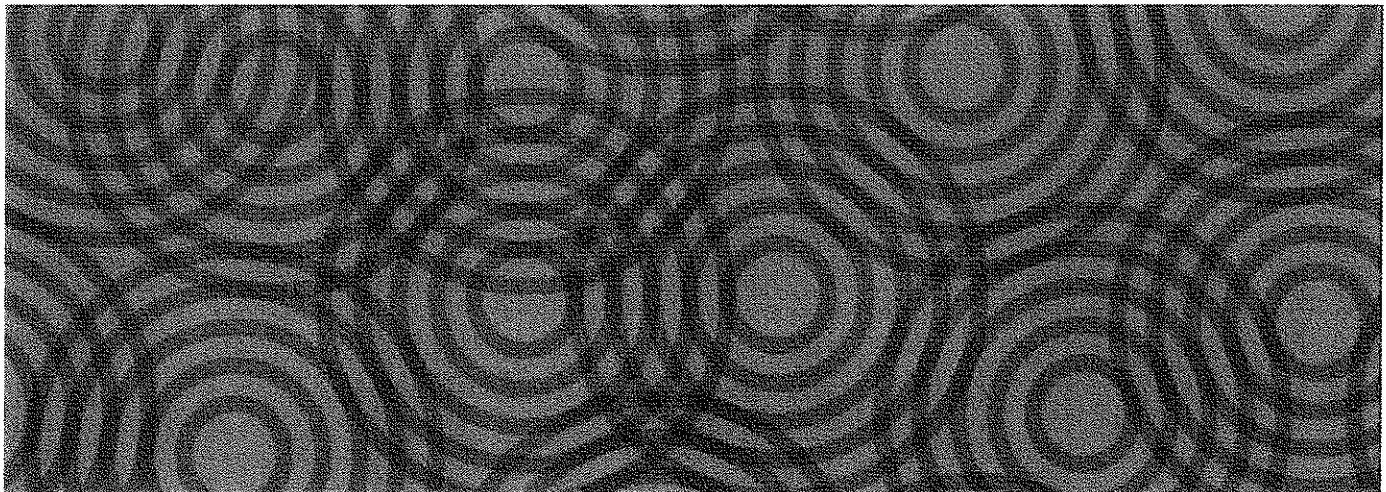




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Executive Summary

Our Understanding of Your Goals

The West Virginia Office of Technology ("WVOT") has issued a Request for Quotation for disaster recovery services

IBM has studied WVOT's recovery requirements and objectives, and presents a solution that we think enables you to not only meet your recovery requirements, but also positions you to accommodate future recovery needs

Our Approach to Meeting Your Goals

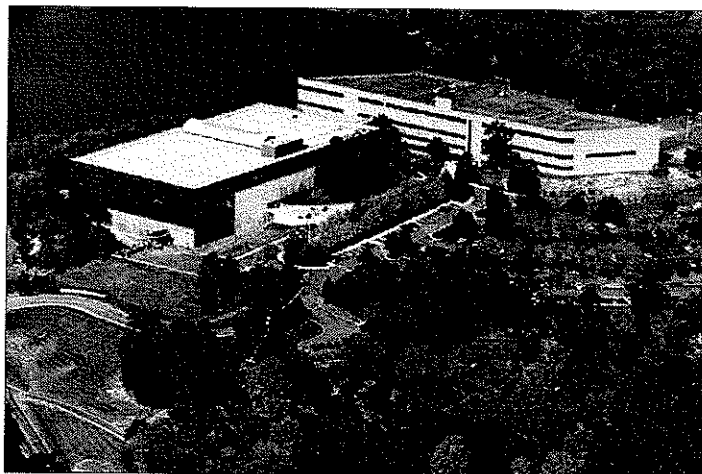
The term "be prepared" applies especially to today's business environment, where enterprises across all industries and locations are challenged by a volatile, increasingly unpredictable world. In addition to protecting their internal resources, organizations must consider the security and well-being of their employees, partners, suppliers and customers, as well as the reliability of the web of networks and systems on which most now depend. The ability to anticipate and adjust to planned and unplanned forces and events—including market fluctuations —requires a proactive approach that takes into account all of a company's assets and vulnerabilities

IBM is proposing recovery services at our fully equipped enterprise recovery site in Sterling Forest, New York to meet the computer hardware, disk storage, peripherals, and network connectivity requirements you have specified in your RFQ

Supplemented by our on-site technical and administrative personnel, the solution we have designed will allow WVOT to thoroughly exercise your recovery plan, and will facilitate WVOT's execution of its recovery plan at time of disaster.

Sterling Forest, New York Enterprise Recovery Site

Right. The Sterling Forest New York Enterprise Recovery Site is located in southern Orange County New York, approximately 45 miles from midtown Manhattan and has over 200,000+ square feet of raised floor





Facility / Infrastructure – The hardened infrastructures of IBM's recovery sites feature built-in redundancy throughout, to mitigate the risk of any type of failure. This includes receiving power and communications for voice and data from multiple providers, via multiple, above and below ground paths. Each of our enterprise recovery sites is outfitted with UPS and backup generators.

Each site has redundant, computer-controlled environmental systems, including multiple chillers, excess cooling capacity, dual water supplies, and fire/smoke/water detection and prevention systems. Security provisions are stringent, and include 24x7 guard patrols, closed-circuit surveillance of all critical areas monitored 24x7, and strictly controlled-access entrances to facilities, I/O suites, client offices and tape vaults via badge reader or numeric scramble pads.

Technology / Inventory – IBM's recovery sites are fully equipped with leading-edge computer technology, including servers, disk devices, tape drives, and other IT peripherals. Our facilities amply accommodate multivendor, multiplatform technologies. IBM invests over \$25 million into its recovery organization annually. Ongoing investments span the installation of servers, storage devices, routers and other current computing technology solutions to meet our clients' growing recovery requirements.

Site Skills and Support – Dedicated, on-site staff consists of over 700 recovery specialists, who support our clients' recovery exercises and recovery events. The dedicated staff is experienced and includes: Account Managers, Project Managers, Systems Specialists and Network Analysts. A key strength of the IBM Business Continuity and Resiliency Services unit is the depth and breadth of experience its professionals contribute to each recovery effort. Since 1989, Business Continuity and Resiliency Services has supported over 550 recoveries in the U.S., and over 750 worldwide. The capabilities of our recovery specialists are not limited to IBM technology—extensive on-site inventories combined with our impressive skill base provides a comprehensive level of support for mainframe, midrange, and multivendor open systems, client/server and workplace environments.

Network – Each enterprise recovery site features a contiguous Network Center and integrated access for remote operations capability. Our RecoveryNet backbone offers connectivity and network recovery, with the advantages of fiber-based SONET rings, POP switching, secure firewall options, and Telecom Carrier Partnerships to provide sufficient bandwidth and varied service options. IBM also provides network consulting to help clients determine the most viable and cost-efficient connectivity solutions.

One of IBM's greatest strengths is its ability to leverage and integrate multivendor hardware and software with IBM services to architect and deploy scalable solutions to meet client needs for security, privacy, continuity, recovery, availability, regulatory compliance, risk management and mitigation.

Solution Overview

Outlined below are the key elements of the proposed IBM services, which we integrate together to assist you in resuming normal, business-as-usual functionality of your mission-critical applications:

- Sterling Forest, New York capabilities to support WVOT's configuration
- Technical recovery support for multi-vendor hardware configurations
- Concurrent recovery of data communications network connectivity



How We Will Deliver

As a subscriber to IBM Business Continuity and Resiliency Services, WVOT will be assigned an Account Manager, a Project Manager and an IBM technical support team comprised of systems recovery specialists and network analysts. This team will be available to support you 24 x 7 during your exercises or actual recovery events, and will interface closely with your IT staff.

Your IBM **Account Manager** has the responsibility for reviewing your goals, objectives, and budget priorities for business continuity. He or she communicates new offerings, maintains responsiveness to your requests in all areas of Business Continuity and Resiliency Services, engages other sales and support specialists to address your needs if necessary, and oversees your overall satisfaction with us.

The IBM **Project Manager** assigned to you is responsible for the success of your engagement, whether it is an exercise or an actual recovery event. Your Project Manager coordinates and manages all recovery exercise activity, including scheduling the exercises.

You will be assigned an IBM technical team comprised of **systems recovery specialists** and **network analysts**. During a recovery exercise or recovery event, these IBM support personnel (available on-site and on-call) will assist you with problem determination related to the hardware and software IBM provides with the configuration.

Included in your proposed contract is a built-in recovery exercise allowance. This "rehearsal time" provides WVOT the opportunity to review your recovery plan, and acquaint your staff with the logistics of the recovery process. All exercise scheduling is done through the IBM Project Manager, who will confer with WVOT's team to determine a mutually acceptable schedule for your recovery exercises. The Project Manager is also your primary point of contact during any events, which includes exercises and recoveries.

In nearly two decades of continuity service, IBM has never turned a subscriber away who declared and needed our recovery support. In each instance, IBM was 100% successful in providing the necessary environment and technical support, so that our customers could recover their mission-critical applications, and resume their business continuity.

Why IBM?

IBM Corporate commitment

IBM commits resources dedicated to our readiness and ability to support our clients' recovery of critical business processes and applications should a business interruption occur. Our clients have been 100% successful in recovering their mission critical applications in each of the 550+ disaster declarations we have supported.

IBM professionals support your recovery

A dedicated Business Continuity and Resiliency Services staff in excess of 700 professionals, averaging nine years of experience, supports you during your recovery exercises and outage emergency events.

Proven processes and intellectual property

IBM BCRS has been providing commercial recovery services since 1989 and based upon this experience offers a robust, proven suite of services to assist you in the development, management, and maintenance of your recovery program.

Multivendor assets to restore operations

We continually make significant investment in IBM and non-IBM I/T assets that are solely dedicated to our clients for their use during exercise and recovery events.



Exclusive IT environment	A Business Continuity and Resiliency Services client is never asked to physically share equipment or space with another client, nor would a client ever be required to compromise the exclusivity of their own IT environment
Risk mitigation	IBM BCRS carefully manages asset syndication levels to provide availability of IT assets to our subscribers, should a regional disaster occur.
Geographically dispersed recovery sites	IBM BCRS has sixteen recovery sites located within the United States. The three enterprise recovery sites located in Gaithersburg, Maryland, Boulder, Colorado, and Sterling Forest, New York are geographically dispersed to minimize the risk of a regional disaster affecting our ability to provide recovery services. IBM has the ability to support most recovery requirements in a single site
Advanced Recovery Techniques	To support our clients that require low RTO (Recovery Time Objective) and RPO (Recovery Point Objectives), BCRS offers a rich set of solutions supporting multivendor architectures and tools that provide advanced recovery techniques
Contract flexibility	Our BCRS contract was designed to provide you flexibility to change and update your coverage so that the recovery solution can support your current IT and business requirements. You are not penalized for changing the assets you subscribe to. In addition, should your recovery equipment needs change, you can add platforms or devices without extending the length of your contract

IBM Response to Request for Quotation

We propose that should IBM be selected as the successful bidder, the general terms and conditions for the resulting contract shall be governed by the terms and conditions of the Master Customer Agreement No. JM 71665 ("ICA") and Addendum to ICA Documents ("First Amendment"), each dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993, and the Second Addendum Amendment to ICA ("Second Amendment") dated May 9, 2008 and approved by the State of West Virginia Attorney General on May 22, 2008, as attached hereto. IBM considers the ICA, First Amendment and Second Amendment to represent the majority of specific exceptions to the terms and conditions contained in the RFQ.

In addition, the terms and conditions that will govern the specific services proposed will be:

- 1) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services (Z125-8306-06) ("the Attachment") (copy enclosed); and
- 2) various Transaction Documents which will specify the details associated with a Subscription(s) (including Configuration details, pricing, contract period, etc.), and any standard IBM amendments to the Attachment that are applicable to the particular options you decide to select for the Subscription(s).

Upon your notification of your intent to award the Disaster Recovery Services for the Mainframe and Network Backbone Support project to IBM, IBM anticipates that a mutually agreed upon Attachment for Multivendor Information Technology Recovery Services will be negotiated prior to commencing any work and will represent IBM's sole and exclusive response to this RFQ. Some customers do have unique contractual requirements and we are always willing to negotiate modifications to the terms and conditions on a case-by-case basis to be made at the transaction level. However, minor modifications involve simple wording changes which are straight-forward and do not affect the price of a transaction; material modifications that substantially change the terms and conditions would affect the price. Accordingly, if the State of West Virginia awards us the business, we are willing to negotiate modifications to the proposed terms and conditions, with the understanding that material modifications may affect the price.



IBM Response to General Terms & Conditions Purchase Order/Contract

We propose that should IBM be selected as the successful bidder, the general terms and conditions for the resulting contract shall be governed by the terms and conditions of the Master Customer Agreement No. JM 71665 ("ICA") and Addendum to ICA Documents ("First Amendment"), each dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993, and the Second Addendum Amendment to ICA ("Second Amendment") dated May 9, 2008 and approved by the State of West Virginia Attorney General on May 22, 2008, as attached hereto. IBM considers the ICA, First Amendment and Second Amendment to represent the majority of specific exceptions to the terms and conditions contained in the RFQ.

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III. VENDOR EQUIPMENT REQUIREMENTS

The following equipment and capacity shall be available to the customer at the recovery center for scheduled testing, and immediately upon customer-declaration of a disaster. Functionally equivalent equipment is acceptable to the customer.

The vendor shall provide, in response to this RFQ, a list of all proposed equipment, including brands and models.

STATE OF WEST VIRGINIA'S REQUIRED RECOVERY CONFIGURATION		IBM PROPOSED RECOVERY CONFIGURATION	
QTY.	DESCRIPTION	QTY.	DESCRIPTION
1	IBM z-Series Enterprise Server Capable of at least 500 MIPS utilizing, at a minimum, 2 CP processors, 16GB of memory and partitioned using PR/SM into two LPARs: LPAR1 (z/OS production) LPAR2 (VM running LINUX)	1	2096 U02 IBM System z9 Business Class 16GB IBM 2096 Memory - 1st 2096
1	Enterprise Storage Server Configured with 4.5TB of usable storage; capable of performing, at a minimum, 3500 I/Os per second; configured as 3390-9 and 3390-3 and supporting PAV and Flash Copy.	1	1 2105800A BASE IBM ESS Model 800 9 2105800A DISK 420GB Storage Increment 8 2105800A FCON 1 Port FICON Channel Adapter 1 2105800A FLC2 Flashcopy Version 2 1 2105800A PAV Parallel Access Volume Supprt
12	IBM Magstar 3590- B1A Tape Drives 128-track, configured with IBM A60 controllers and capable of reading/writing from/to 3590-B tape media	1	1 3494G BASE IBM 3494 Tape Library 8 3494G-ESC B1A IBM 3590-B1A Tape Drive 4 3494G-ESC B1A+ IBM 3590-B1A Tape Drive
16	3490 Tape Drives 36-track, capable of supporting 3490-E tape media	4	3490 X40 Tape Cartridge Unit E-Series (4 drives per unit)
6	PC Workstations For use as operator consoles and TN3270 sessions	6	3270 PC PC with 3270 emulation
1	Printing system Capable of producing 225 pages per minute of IPDS output in simplex mode, using continuous forms, and capable of printing in duplex mode.	1	4000ID1/2 STF IP 4000 Duplex prt IPM 708
1	Impact Printer Minimum speed of 1000 lines per minute, using continuous forms.	1	6262 022 Printer - 2200LPM



STATE OF WEST VIRGINIA'S REQUIRED RECOVERY CONFIGURATION		IBM PROPOSED RECOVERY CONFIGURATION	
QTY.	DESCRIPTION	QTY.	DESCRIPTION
1	OSA Express GbE Total of 2 ports.	1	2096OSAE GBSX 2096 OSA-Express2 GbE SX
2	OSA Express 1000 Base-T Total of 4 ports.	2	2096OSAE 1000 2096 OSA-Express2 1000BASE-T
1	T1 The State of WV will be responsible for providing the line and any necessary expenses involving T1 connections at the vendor recovery center. The T1 connection will terminate at a customer-supplied router located at the recovery center. (Also see Section IV, item 9.)		BCRS will provide the Local Loop to the Verizon CO in Newark, NJ. Once proposals are signed, we will provide CFA/LOA. The circuit will extend to the COE cabinet.
1	Line Analog Line for Dial-In to Router		Dedicated Dial Line will be provided for the router.
1	Modem V.92 for router connectivity		For permanent router, the modem will be supplied by the customer. For the 3845 router, the modem will be supplied by BCRS.
1	CISCO 3845 Router with the following features: 3845 w/AC PWR, 2GE, 1SFP, 4NME, 4HWIC, IP Base, 64F/256D		This is a shared router and will be provided at the time of test for State of West Virginia, by BCRS.
1	S384AISK9-12418 CISCO 3845 ADVANCED IP SERVICES		Router will have the IOS Level stated by the customer
2	NM-1GE 1 Port GE Network Module		For the permanent router, the cards are supplied by customer. For the shared router, the cards are provided at time of test by BCRS.
1	NM-1T3/E3 One port T3/E3 network module		For the shared router, the cards are provided at time of test by BCRS.
1	VWIC2-2MFT-T1/E1 2-Port 2 nd Gen Multiflex Trunk Voice/WAN int. Card – T1/E1		For the permanent router, the cards are supplied by customer.
2	GLC-T= 1000BASE-T SFP		Layer 2 port are provided by BCRS.
1	CISCO GbE Switch with the following features: WS-C3560G-24TS-S Catalyst 3560 24 10/100/1000T + 4 SFP Standard Image; 2 GLC-SX-MM=GE SFP, LC connector SX transceivers; fiber cables as required to connect the switch to the OSA ports on the recovery enterprise server.		Layer 2 connectivity is supplied by BCRS. The switch is configured and managed by BCRS. VLAN will be provided at the start of recovery exercise or declaration. There will be a 6509 MSF3 added to the proposal in order to support layer 3 routing.



STATE OF WEST VIRGINIA'S REQUIRED RECOVERY CONFIGURATION		IBM PROPOSED RECOVERY CONFIGURATION	
QTY.	DESCRIPTION	QTY.	DESCRIPTION
1	CISCO SMARTNET 24x7x4 for above equipment		Customer will handle this for the router. BCRS will handle for switches and BCRS managed devices



Equipment Configurations

EQUIPMENT CONFIGURATION

This Document is intended for INFORMATIONAL PURPOSES ONLY,
and MUSI not be included in or as an attachment to a
contract.

Customer Name: SIAIE OF WESI VIRGINIA

Configuration

Number: 9688835
Address: 1900 KANAWHA BLVD BLDG 5 RM 1001E
CHARLESION, WV 25305-0001

Processor: 2096 U02

Recovery Site: Sterling Forest, NY

System Storage: 16384MB

Supplement Number: CFI2D5C

DASD Gigabytes: 4620GB

Quantity or Units	Machine or Product	Model	Product Description
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IBM Equipment:

1	2096	U02	IBM System z9 Business Class
16	2096	GB1	IBM 2096 Memory - 1st 2096 Provides 1 GB of processor memory on the first 2096.
1	2105800A	BASE	IBM ESS Model 800 Includes: 16 GB Cache, 2 8-packs of 72.8GB drives, 840GB of RAID 5 protected storage plus sparing
9	2105800A	DISK	420GB Storage Increment Includes: 1 8-pack of 72 8GB drives, 420GB of RAID 5 protected storage plus sparing.
8	2105800A	FCON	1 Port FICON Channel Adapter Includes: 1 port of FICON Channel Host Connectivity.
1	2105800A	FLC2	Flashcopy Version 2
1	2105800A	PAV	Parallel Access Volume Supprt
4	3490	X40	Tape Cartridge Unit E-Series Includes: 1 - 3490 A20 Control Unit per 4 - 3490 X40. Each unit of 3490 X40 contains (4) 36-track Drives
1	3494G	BASE	IBM 3494 Tape Library Includes 3494-L14 with 30 cartridge I/O station, dual gripper, and 140 cartridge capacity.
8	3494G-ESC	B1A	IBM 3590-B1A Tape Drive Adds one 3590-B1A tape drive to 3494G BASE supported on a 3590-A60 ESCON tape controller. Provides 260 cartridge capacity per 4 drives. Prerequisite: 3494G BASE configuration.
4	3494G-ESC	B1A+	IBM 3590-B1A Tape Drive Adds one 3590-B1A tape drive to 3494G BASE supported on a 3590-A60 ESCON tape controller Provides 260 cartridge capacity per 4 drives Prerequisite: 3494G BASE configuration.
1	4000ID1/2	SIF	IP 4000 Duplex Printer IBM InfoPrint 4000 ID1 and ID2 Duplex printing system.
1	6262	022	Printer - 2200LPM
1	2074	001	Non-SNA 3270 Controller Includes: 2 ESCON ports, 2 Ethernet ports, 2 Token Ring ports. Supports up to 32 non-SNA 3270 sessions (16 per ESCON port). Prerequisite: A "3270 PC" solution is required for local non-SNA support. Support for any other PC connection requires a "REMCONS PKG1" solution.
6	3270	PC	PC with 3270 emulation Personal Computer configuration including a Fast Ethernet port,

EQUIPMENT CONFIGURATION

This Document is intended for INFORMATIONAL PURPOSES ONLY, and MUST not be included in or as an attachment to a contract.

Customer Name: SIAIE OF WEST VIRGINIA

Configuration

Number: 9688835

Processor: 2096 U02

Address: 1900 KANAWHA BLVD BLDG 5 RM 1001E CHARLESTON, WV 25305-0001

Recovery Site: Sterling Forest, NY

System Storage: 16384MB

Supplement Number: CFI2D5C

DASD Gigabytes: 4620GB

Quantity or Units	Machine or Product	Model	Product Description
=====			

Windows, and IN3270E 3270 terminal emulation software. Prerequisite: 2074 Ethernet port with IBM assigned TCP/IP address

- 1 2096OSAE GBSX 2096 OSA-Express2 GbE SX
Each 2096 OSA-Express2 GbE (Gigabit Ethernet) SX (short wave) has two independent ports.
Maximum of two 2096OSAE GBSX supported per 2096 processor.
- 2 2096OSAE 1000 2096 OSA-Express2 1000BASE-I
Each 2096 OSA-Express2 1000BASE-I Ethernet has two independent 10/100/1000 Mbps Ethernet ports
Maximum of two 2096OSAE 1000 supported per 2096 processor.
- 6 PCOPI FC RSC1 Remote Svr. Console Function

This entry provides the software & configuration that enables a PC to be used as a remote console for Intel, Open Systems, or iSeries servers. This includes:

- desktop operating system
- remote console configuration
- assistance with server RAID configuration for Intel servers

- 6 PCWS-3200 BASE P4-3.2Ghz Desktop W/Wkspce
Item: PC Desktop With Workspace, Phone, Chair, & Power For Office Equipment

Includes: PCI Architecture
Pentium IV 3.2Ghz Processor
512MB Memory, 100Mhz Bus
40 GB IDE Hard Drive
1 DVD-ROM
Color Monitor W/19" viewable screen size
Keyboard and Mouse
Serial and Parallel Port
10/100 Ethernet Adapter Included
**USB Support

Note: This equipment cannot be selected for temporary transfer.

Network Lines: NONE

E Q U I P M E N T C O N F I G U R A T I O N
This Document is intended for INFORMATIONAL PURPOSES ONLY,
and MUST not be included in or as an attachment to a
contract.

Customer Name: SIAIE OF WEST VIRGINIA

Configuration

Number: 9688835
Address: 1900 KANAWHA BLVD BLDG 5 RM 1001E
CHARLESTON, WV 25305-0001

Processor: 2096 U02

Recovery Site: Sterling Forest, NY
Supplement Number: CFI2D5C

System Storage: 16384MB
DASD Gigabytes: 4620GB

Quantity or Units	Machine or Product	Model	Product Description
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Non-IBM Equipment:

1	HP9000DN	PRI1	HP9000 Series L'Jet 64MB Eth /HP9000 Series LaserJet Printer /Ethernet connectivity included /64MB Memory, 50PPM
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EQUIPMENT CONFIGURATION

This Document is intended for INFORMATIONAL PURPOSES ONLY, and MUSI not be included in or as an attachment to a contract.

Customer Name: SIAIE OF WEST VIRGINIA

Configuration

Number: 9688835

Processor: NULLCPU NEI

Address: 1900 KANAWHA BLVD BLDG 5 RM 1001E CHARLESTON, WV 25305-0001

Recovery Site: Sterling Forest, NY

Supplement Number: CFI2FPC

Quantity or Units	Machine or Product	Model	Product Description
=====			

IBM Equipment: NONE

Network Lines:

- 1 INT/MM IBM MultiMegabit Internet Access
Includes: - Local access to ISP point of presence from the IBM provided recovery facility.
- Network interface equipment and IP router at the IBM provided recovery facility
- Wide area network interface and appropriate Ethernet port on IP router.
- 29 registered IP addresses from a shared address pool. For additional addresses subscribe to INI/ADDR XYZ

Notes:

- Each selection of Qty 1 is equivalent to 1Mb Internet Access
- This Internet solution uses shared resources available to customers at all recovery locations in the U.S. The additional Internet Access terms in your contract apply.
- Available during recovery exercise or outage emergency only.

- 1 LINE/SOWV DIAL Sterling Dedicated Dial Line
Includes: Dedicated Analog Dial Line for State of West Virginia.
- 1 LINK/SOWV DS1 DS1 BRSC to Verizon Newark NJ
Includes: Dedicated DS1 connectivity for State of West Virginia from the IBM Business Continuity and Resiliency Services Center, Sterling Forest, NY to the Verizon Business Central Office, 95 Williams St., Newark, NJ.

Customer is responsible for:

- Providing or contracting for circuit termination equipment (Router, Mux Etc.)
- Port and Cross Connection at the LEC or IXC C.O

- 1 WEBVPN 10 Remote Access SSL WebVPN
Includes: Remote access to the IBM recovery center via customer web browser.

- 10 UserID's
- Broadband (Internet) gateway with appropriate microcode at IBM recovery center.
- private 192.168 net addresses will be assigned to users.
- IBM design of IP tunneling function between customer end-user device(s) and SSL VPN gateway at IBM recovery center.

NOTES:

- IBM will provide certain configuration parameters including

E Q U I P M E N T C O N F I G U R A T I O N
 This Document is intended for INFORMATIONAL PURPOSES ONLY,
 and MUST not be included in or as an attachment to a
 contract

Customer Name: STATE OF WEST VIRGINIA

Configuration

Number: 9688835
 Address: 1900 KANAWHA BLVD BLDG 5 RM 1001E
 CHARLESTON, WV 25305-0001

Processor: NULLCPU NEI

Recovery Site: Sterling Forest, NY

Supplement Number: CFT2FPC

Quantity or Units	Machine or Product	Model	Product Description
=====			

- userid and password for use during exercise and outage
- Customer is responsible for providing Internet Explorer or Netscape web browser on their end user PCs.
- Customer is responsible for providing Internet access for their end users
- Customer agrees to comply with prerequisites and implement instructions provided.

Non-IBM Equipment:

- 1 CAI6509 MSF3 Customer Controlled CAT 6509
 Includes: - Cisco 6509 Enhanced Chassis
 - Supervisor Engine 720, plus MSFC3/PFC3B
 - Dual power supplies
 - 1GB Sup720 Memory
 - 1GB MSFC3 Memory
 - 512MB Flash Memory Card
 - (1) 10Gigabit Ethernet Port for Uplink
 - (2) Fiber Gigabit Ethernet Ports for Uplink

Note: Customer Configures the 6509 and BCRS Integrates into the LAN Infrastructure.

- 1 CIRIR 3845 Cisco Integrated Svcs Router
 Includes: Cisco 3845 Integrated Services Router with:
 - 1 GB RAM
 - 256 MB Flash
 - (2) copper Gigabit Ethernet ports
 - (2) Integrated Advanced Integration Modules (AIM) slots
 - (4) High-speed WAN interface card (HWIC) slots
 - (4) Enhanced Network Module (NME) slots
 - (4) Packet Voice Data Module (PVDM) slots
- 1 CI36XX FC NMT3 1-Port CC I3/E3 Network Mod
 Includes:
 - 1-Port Clear Channel I3/E3 Network Module
- 1 COETEMP FE 10/100 Ethernet Port for COE
 Includes: One port for customer owned equipment, available for recovery exercise or outage emergency only.



IV. GENERAL SPECIFICATIONS

1. **The vendor shall make an alternate processing facility / disaster recovery center available to the customer for use in scheduled disaster recovery testing, and immediately in the event of a customer-declared disaster.**

IBM Response:

IBM is proposing recovery services at our fully equipped enterprise recovery site in Sterling Forest, New York to meet the computer hardware, disk storage, peripherals, and network connectivity requirements you have specified in your RFQ

The IBM Attachment for Multivendor Information Technology Recovery Services, under the subsection "Recovery", states:

"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, the recovery 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

2. **Recovery services in support of the customer shall be concentrated at a single recovery center. The recovery center shall be located no further than 600 miles from the customer's site, which is located at 1900 Kanawha Boulevard East, Charleston, WV 25305.**

IBM Response:

IBM is proposing recovery services at our fully equipped enterprise recovery site in Sterling Forest, New York to meet the computer hardware, disk storage, peripherals, and network connectivity requirements you have specified in your RFQ. This location is approximately 544 miles from Charleston, WV

Supplemented by our on-site technical and administrative personnel, the solution we have designed will allow WVOT to thoroughly exercise your recovery plan, and will facilitate WVOT's execution of its recovery plan at time of disaster

3. **The vendor shall maintain technical compatibility with the customer as the customer upgrades hardware, software, and network configurations during the life of the contract resulting from this RFQ.**

IBM Response:

IBM's recovery offering permits each client to request changes to a subscription (i.e., additions of machines and/or network lines to accomplish upgrades) on *one month's written notice*. This will allow WVOT to tailor a recovery configuration that is in step with your current business needs. No penalty fees are applied, based on either the change request or the frequency of change requests

Specifically, the IBM Attachment for Multivendor Information Technology Recovery Services, which contains our standard terms and conditions, states under the section *IBM Responsibilities*:

"A request to change any detail of a Supplement requires one month's written notice. If IBM agrees, IBM will confirm the change by sending a revised Supplement for your signature, 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."

- 4. At no additional cost, the customer shall have access to, and use of, the vendor's recovery center, and equipment configuration (as specified in Section III of this RFQ), for up to 60 hours each year, in order to test its disaster procedures. The test hours shall be either contiguous or divided into multiple tests, at the customer's option. The customer anticipates performing one inclusive test each calendar year, but it reserves the right to perform multiple tests. In either case, the total test-time will not exceed 60 hours a year.**

IBM Response:

Included in your proposed IBM Business Continuity and Resiliency Services contract is a recovery exercise allowance of 60 hours per year which represents one recovery exercise per year.

As stated in the IBM Attachment for Multivendor Information Technology Recovery Services:

"IBM provides time you request for the purpose of exercising your recovery plan, procedures and operation ("Recovery Exercise", "Exercise"). For each Recovery Exercise IBM makes 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."

- 5. The customer will consult with the vendor in scheduling test time. The vendor shall provide the customer with a scheduled block of test time within 30 days of customer request. The actual test shall start no less than 60 days thereafter, in order for the customer to have time to prepare properly. The customer's testing shall include, but not be limited to: loading and testing the customer's mainframe operating systems, restoration of the State's backbone network, restoration of critical State applications and databases, batch processing, printing, and communications testing.**

IBM Response:

IBM will work with the State of West Virginia to provide available exercise dates within 30 days of your request. The State must affirm that these dates are acceptable in order for IBM to schedule them. IBM will work with the State to schedule exercise dates that are more than 60 days from the time of your request, however, these exercises will be scheduled as we mutually agree, so that the State may exercise your disaster recovery process.



- 6. Immediately upon the conclusion of each of the customer's tests and actual disaster recovery events, the vendor shall perform a minimum initialization of the Direct Access Storage Devices (DASD) volumes that were used by the customer. If the customer requires a more thorough erasure of its data from DASD, the customer will be responsible for performing the task, and will perform it after each test (within the 60 hour window) or immediately upon the conclusion of any actual disaster recovery event.

IBM Response:

IBM Business Continuity and Resiliency Services clients are responsible for their programs and data while in the hot site and for the removal and/or erasure of their programs and data from the equipment used during an exercise or recovery. Our clients are free to choose to use their own processes for data removal. Data removal must be complete by the end of the scheduled exercise time or by the end of the recovery period. Note that certain complex data removal techniques may require many hours to perform and could impact the client's exercise hours.

While IBM does use data handling processes routinely (e.g. clipping the VTOCs on the mainframe DASD) as part of our standard shutdown/setup process in the hot site after exercises and recoveries, these processes are for our own purposes and are not intended to remove and/or erase data; the processes remove some, but not necessarily all, pointers to data recorded on the devices.

- 7. The vendor shall provide technical support personnel, including systems programmers and network engineers, to assist the customer in the planning of tests, and during events at the recovery facility. The same support shall be available to the customer 24/7 during tests and customer-declared disasters.

IBM Response:

IBM has over 700 full-time professionals supporting our recovery sites. One of the key strengths of Business Continuity and Resiliency Services is the depth of experience which IBM professionals contribute to a recovery effort. The management and technical support staff assigned to each of our recovery sites represents a significant IBM asset in providing our service.

Each IBM enterprise recovery facility has a dedicated management and technical staff available to assist you, prior to and during your use of the recovery site. For our clients, technical and systems support for the Configuration(s) is provided 24X7 by IBM BCRS specialists. There is no additional charge for this; it is standard support that is available to all BCRS subscribers, whether the event is an exercise, or an actual recovery from an unplanned emergency outage.

Some of the key responsibilities of our support staff are as follows:

Support Staff:	Responsibilities
Account Manager	<p>The IBM Account Manager is your single primary contact into Business Continuity and Resiliency Services. The Account Manager has the responsibility for reviewing your goals, objectives, and budget priorities for business continuity, communicating new offerings, and being responsive to your requests for Business Continuity and Resiliency Services. The Account Manager engages sales and technical support specialists to address your needs when necessary, and maintains your overall satisfaction with us.</p> <p>Your Account Manager is your interface, should you ever need to revise your services contract (for instance, an upgrade to your subscribed IT recovery configuration). The Account Manager will periodically review your BCRS account and contact you if necessary, in order to:</p>



Support Staff:	<p>Responsibilities</p> <ul style="list-style-type: none"> • Validate the accuracy of the configuration and network services listed in your Supplement(s) for Multivendor Information Technology Recovery Services • Determine if you need to add and/or delete equipment to your contracted recovery configuration, because of changes to your requirements • Review any changes that IBM plans to make to our equipment inventory at the recovery site, which might impact your contracted configuration requirements <p>Contact your Account Manager if you have any question about our recovery services. You never need to know the "right" person to call, because if your Account Manager can't immediately answer your question, they will engage a staff resource within IBM BCRS who can.</p>
Project Manager	<p>Your Project Manager is your single point of contact for delivery of IBM's Business Continuity and Resiliency Services during any event (i.e., an exercise or recovery). All recovery exercises are scheduled via your Project Manager, who will encourage you to plan your exercise event well in advance, to give your company time to review and hone your plans and for IBM to schedule a mutually agreeable date for your exercise. You can even schedule a recovery exercise two years in advance.</p> <p>Once you have scheduled a recovery exercise event, your Project Manager will coordinate all of the event's support activity. The Project Manager will work together with your team to prepare for the exercise, so that all details are clarified prior to the scheduled date. As part of the Business Continuity and Resiliency Services total service team, your Project Manager is responsible for IBM's provision of services during your event, whether it is an exercise or an actual recovery from an outage emergency.</p>
Network Support	<p>Consisting of more than 75 network professionals, our network team provides support for every aspect of your Recovery Site connectivity requirements. We provide network support for Business Continuity and Resiliency Services in North America from the three enterprise recovery sites in Gaithersburg, Sterling Forest and Boulder.</p> <p>The skills on the network support team are comprehensive, covering hardware and software setup, implementation and problem determination for: front end processors, routers, modems, MUXes, Token Ring, Ethernet, client workstations, servers, Teloquent voice recovery, and a full complement of wide area connectivity options. Many on our network team have advanced degrees with telecommunications specialties. Some have extensive project management skills, while others have CNE (Certified Novell Engineer) and MCSE (Microsoft Certified Systems Engineer) certification. In addition, IBM maintains a skilled Development staff whose primary function is to continually evaluate the telecomm industry, in support of developing high quality, cost-effective network recovery solutions for our clients.</p>
Systems Support	<p>IBM Business Continuity and Resiliency Services provides diverse systems support for multiple computing environments including IBM mainframe, Series p, SUN, HP/DEC, Series i, and Tandem. Nearly 100 Systems support specialists within IBM BCRS average 16 years of I/S experience.</p>



Support Staff:	Responsibilities
	<p>Our expertise and support of IBM and non-IBM equipment and software is second to none in the recovery industry. Our alliances with IBM developers, IBM help desks, and IBM testing labs allow our staff to access information and technical hardware only available to IBM Business Continuity and Resiliency Services. We cover the gamut from leading-edge Parallel Sysplex and Virtual Tape Server technology, to older, legacy hardware and operating systems including MVS/XA and MVS/370. Through our alliances with SUN, HP, and EMC, our systems support staffs have equal access to these vendors' product education and support structures. All of the above uniquely position IBM as your commercial recovery provider</p>
<p>Customer Administrators</p>	<p>Customer Administrators are the key to the smooth operation you see when you come to a Business Continuity and Resiliency Services recovery site. A CA works with your Project Manager to set up security clearances for your team. Upon your team's arrival, following site security's verification of your IDs, Customer Administrators will issue temporary access badges to your team, provide instruction on how to obtain access to your designated areas via the security system, and guide you and your team to the appropriate recovery suite.</p> <p>Customer Administrators will oversee the receipt and shipment of your company's vital records by working with site security and shipping/receiving departments. The CA takes pride in providing our recovery site in showcase condition. This includes your assigned suite(s) being clean, stocked, and ready for your arrival.</p> <p>They are there to help you with a wide variety of administrative details throughout an exercise or recovery. The CAs answer calls to the Service Delivery desk and deliver messages in a timely fashion, and page clients or technical support when needed. They can also provide recommendations and directions to local restaurants, assist with ordering take-out meals, and handle the sending or receipt of faxed materials. In an outage emergency situation, the CAs can assist with hotel, car or catering arrangements. The Customer Administrator team will be there 24 hours a day to help make your stay at our facility is a pleasant one, and encourages you to "Ask for it, if you don't see it."</p>

8. **If the customer requests, the vendor shall assist the customer in handling the customer's tapes. Such assistance could take the form of unloading/loading tapes from the transport vehicle(s) and transporting the tapes between the vehicle and the vendor's tape facilities.**

IBM Response:

Prior to your event, our staff will receive your tapes from your shipper at the IBM recovery site, unpack your media from its shipping containers; sort and inventory the media according to your specifications; and stage the media in storage racks. At the conclusion of your event, the media will be packed according to your specifications in the original shipping containers. It is the customer's responsibility to arrange for the pick up of the tape media as well as communicate the arrangements via our General Access Form.



9. The customer will ship a router to the vendor after award of bid. The vendor shall install the router, house it in a secure cabinet, and ensure that it remains fully operational at all times. At the time of a scheduled disaster recovery test or declared disaster, the vendor shall connect the customer's router to the vendor's router. The vendor shall, upon customer request, provide the exact cabinet location of the router.

IBM Response:

IBM has included hot node floor space as part of our proposal. Per the amendment for Customer Owned Equipment/Hot Node Floor Space, the equipment will be in a powered-on active state and will be immediately ready to operate with the configuration specified in the associated Supplement Multivendor Information Technology Recovery Services.

The customer is responsible to perform, or provide for the performance of, the Equipment's installation, maintenance and repairs, necessary engineering changes (including those for safety as required by IBM and/or IBM's insurers, local laws, ordinances, or code), and de-installation activities.

IBM can provide this installation on behalf of the State of West Virginia for actual and reasonable charges.

10. The recovery center shall feature uninterruptible power supply (UPS) units, batteries, diesel generators, redundant transformers, redundant chillers/air conditioners, smoke and water detectors, fire suppression systems, 24-hour guard service, and closed circuit TV monitoring.

IBM Response:

Power Conditioning - Power at the Sterling Forest recovery facility is supplied clean and conditioned to support constant 60Hz, as required by the hardware. Electrical power is supplied to the site by Orange & Rockland Power & Light Company. The feeders are connected to an Uninterruptible Power Supply (UPS) system that distributes the power all raised floor areas of the facility. The main power substation for the Sterling Forest facility is located on-site. (The power distribution centers are located within close proximity of the site, in Hillburn, NY and Sugarloaf, NY). Power is supplied to the facility from two 69 kilovolt lines, transferred to two 13.2 KV lines, that enter the site from two opposite directions through underground ducts/banks.

HVAC/Chillers - The Sterling Forest recovery site has sufficient cooling system capacity to meet our clients' requirements. Overhead cooling provides fresh air for the data center and administrative areas, and under-floor CAC units cool all raised floor areas. At the Sterling Forest site, there is a chiller capacity of 3,000 tons, with a total of five chillers installed. Two of the chiller pumps deliver 1,800 gallons of chilled water per minute. All the remaining pumps are used for backup.

The facility uses city water. If that becomes unavailable, Site Operations can pump water out of Sterling Lake (which is immediately behind the facility) for the chillers. In addition, 12,000 gallons of potable water (in two 6,000-gallon redundant tanks) are maintained in reserve at all times, in the event of a water main break.

UPS - At the IBM Sterling Forest recovery site, the UPS isolates the raised floor areas of the facility from power surges, voltage fluctuations, frequency variations, and loss of utility power. On-site battery banks can maintain stable power during a utility outage. The system consists of four Liebert UPS modules. They are connected to a common output BUS to supply power to our recovery site. Each module is rated at 750 KVA, with a total connected-capacity rate at 2250 KVA (parallel redundant). Two modules are required to carry the present load. The remaining modules are for redundancy and future growth. In addition, Building One has three 500 KVA UPS units and two new Liebert 750 KVA units.



Diesel Generator - The UPS system at Sterling Forest will carry the raised floor areas of the recovery site at full load for 15 minutes. If there is a power outage of significant duration, turbine generators will automatically start within two minutes and supply the required power. There are three 2,500/3,100 kilowatt turbine generators, one of which is a backup. Sufficient fuel is on hand to supply the generators for 20 days. (Additional fuel can be delivered, as required, to provide continuous power until the utility emergency is resolved). The entire system is tested at full load once a month.

Water Detection - Leak detector sensors are positioned under all raised floors at the Sterling Forest recovery site. The leak detectors alarm locally, as well as back to Management Systems. In addition, on-site maintenance staff conducts visual inspections of all critical areas.

Fire Detection - The IBM Sterling Forest recovery site has a fire protection system, which utilizes overhead and under-floor photoelectric fire detectors. The sensors are monitored remotely at the utilities operations control center and at guard stations.

Fire Suppression - The Sterling Forest site has a fire suppression system that utilizes automatic pre-action, dry pipe sprinklers, sensors and water. Hot site, cold site, offices, corridors, and tape libraries are all protected. Fire extinguishers are also strategically located throughout the facility. This location also conforms to all National Fire Protection Association (NFPA) 75 standards. Shutdown procedures are readily available in case of an emergency.

Security - The Sterling Forest recovery site provides 24 hours per day, 7 days per week security coverage with secure client parking and facility entrances. Access control monitoring systems and closed circuit cameras provide continuous monitoring throughout the site. These systems are located internally and externally, and are monitored by a Security Control Center, which is staffed on a 24 x 7 basis.

11. **The vendor shall provide the customer with minimal office facilities during testing and disasters. The facilities shall be located at the recovery center and shall include at least 600 square feet of office space, chairs, work surfaces, terminals connected to the recovery CPU, at least six (6) telephones connected to long-distance service, and Internet access.**

IBM Response:

The IBM Sterling Forest recovery site provides office space and business support to meet our clients' requirements, including offices, conference room, copiers, telephones and fax machines for subscriber use.

Additional work area recovery seats, which include a desk, chair, PC workstation and phone can be provided to the State of West Virginia and are available at the Sterling Forest recovery site. IBM is happy to work with you to understand and refine this requirement. The price for these seats has not been included in the proposal.

12. **The vendor shall have at least three (3) years of experience in assisting clients in recovering IBM mainframe-based applications at its recovery center(s).**

IBM Response:

IBM's has been providing commercial disaster recovery services to our clients since 1989.

13. The vendor shall provide a minimum of three (3) references, with contact information, which are currently using the proposed recovery center. The references shall be located within the continental United States. The customer reserves the right to contact each of the references.

IBM Response:

Craig Olson
Manager, Information Security
AgriBank, FCB
Phone: 651-282-8625
Email: Craig.Olson@agribank.com

Debra Stafford, CBCP, CBRA
Investigative and Corrective Security Controls Manager
State of Minnesota
Office of Enterprise Technology
658 Cedar Street
St. Paul, MN 55155
651-201-1146
Email: Debra.stafford@state.mn.us

Gary Alfred
Best Buy
612-291-8569
Email: Gary.alfred@bestbuy.com

14. The vendor shall provide an overview of the vendor's proposed recovery center. The overview shall include at least a written description of the facility, and should include photographs of the facility; driving directions to the facility from the customer's site at 1900 Kanawha Boulevard East, Charleston, WV; driving directions to the facility from nearby airports; and a map(s) indicating the location of the facility, recommended routes, and nearby lodging.

IBM Response:

The IBM Business Continuity and Resiliency Services site in Sterling Forest, New York is a fully equipped, enterprise recovery site with a contiguous Network Center. The hardened infrastructure of this hot site has built-in redundancy throughout, to mitigate the risk of failure. This includes receiving power and communications from multiple providers, and outfitting the entire site with the latest in UPS and generator technology. Full time security guards and controlled-access doors to all entrances and system suites provide for comprehensive client security.



Above: the Sterling Forest, NY Enterprise Recovery Site has over 200,000 square feet of raised floor



Location – The Sterling Forest recovery site is located in southern Orange County, New York, approximately 45 miles from midtown Manhattan

Airports – The Sterling Forest recovery site is located within 75 miles of the following five major airports, typically within a one-hour drive from the recovery site: John F Kennedy International Airport, LaGuardia Airport, Stewart International Airport, Westchester County Airport and Newark Liberty International Airport (in New Jersey) Westchester County Airport and Stewart International Airport are about 35 minutes from the recovery site. A heliport is available at the Sheraton Crossroads Hotel in Mahwah, New Jersey, which is only fifteen minutes from the site.

Ground Transportation – Several major highways, notably the New York State Thruway, Interstate 287, the Garden State Parkway, and U.S. Route 17, are easily accessible from the Sterling Forest recovery site. A number of limousine and taxi services are available in the area. There are rail connections between NYC and the Amtrak station at Suffern, New York, which is only ten minutes from Sterling Forest by taxi or limousine service.

Hotels – There are 14 hotels with more than 2,500 rooms within a 20-minute drive of the Sterling Forest site. In addition, there is a wide selection of restaurants and shopping malls in the vicinity.

Amenities – We provide fully equipped suites with managers' offices, large screen TVs, stereos, printers and fax machines, a vending/kitchen area, lounge and library. Access control security measures are provided, including 24-hour security guards.

Our website at www.ibm.com/services/continuity contains area information for each of IBM's recovery sites, including travel directions, transportation options, nearby airports, locations of hotels and restaurants, and site services.

V. PRE-TEST SPECIFICATIONS

1. **At least two weeks prior to the start of disaster recovery tests, the vendor shall provide the customer with the names, phone numbers, electronic mail (e-mail) addresses, and hours of availability, of individuals who will be assisting the customer, remotely, in preparation for the test, and at the recovery center during the test. Said individuals shall include, at a minimum, the project manager, the IT specialist, and the network management integrator. The vendor shall also indicate who will be available to provide similar assistance to the customer, at the recovery site, during hours outside of prime shift (8:00 a.m.- 5:00 p.m.) and shall provide similar contact information for those individuals.**

IBM Response:

IBM has read and acknowledges the above

2. **MODEM TEST Approximately 12 hours prior to a scheduled disaster recovery test, the vendor shall work with the customer's networking staff to facilitate an end-to-end mini-test to ensure connectivity between the customer's modem and the recovery center's modem and router. After successful connectivity to the disaster recovery center's modem and router, the customer will remotely configure the T1 interface of the router located at the recovery center.**

IBM Response:

IBM will accommodate a modem test

3. **T-1 TEST At the start of the disaster recovery test, the State and the vendor shall work together to establish connectivity between the customer's data center and the vendor's router. During the entire testing period, the vendor shall provide modem connectivity into the router located at the recovery center.**

IBM Response:

IBM has read and acknowledges the above

4. **After the conclusion of the disaster recovery test, the vendor shall save the customer's router settings. The vendor shall load the configuration during the customer's next mini-test, disaster recovery test, or customer-declared disaster.**

IBM Response:

IBM can perform this service under a separate Statement of Work via our Recovery Program Execution offering. Pricing is included in the proposal



VI. TERMS AND CONDITIONS

1. The contract resulting from this RFQ will become effective on award, and will extend for a period of one (1) year thereafter. The vendor must be able to begin providing as services, as identified above, on November 1, 2008

IBM Response:

IBM has provided pricing for a 12-month term

2. The contract may be renewed upon the mutual written consent of the customer and the vendor, submitted to the Director of the Purchasing Division 30 days prior to the contract expiration date. Such renewal shall be limited to two (2) successive one-year terms.

IBM Response:

IBM has read and acknowledges the above.

3. The vendor shall assume full responsibility for delivery of all services provided under this contract. Any use of subcontractors shall not relieve the vendor of said responsibility.

IBM Response:

IBM has read and acknowledges the above

VII. COSTS

1. **The vendor shall complete the attached cost sheet and include it with the bid response.**

IBM Response:

IBM has read and acknowledges the above.

2. **The Monthly Subscription Cost shall be based on the requirements identified in Sections III and IV of this RFQ.**

IBM Response:

IBM has read and acknowledges the above.

3. **The Comprehensive Disaster Declaration Fee shall include all customer costs associated with declaring a disaster. For bid preparation purposes, the vendor should assume that the customer will declare one disaster during the initial 12 months of the contract.**

IBM Response:

IBM does not charge a disaster declaration fee. IBM allows our clients to declare based on their business judgment and does not try to dissuade disaster declarations through fees and practices. If a client places a call to 800-IBM-SERV to declare an outage emergency, this does not initiate any charges.

4. **The Recovery Daily Usage Charge shall include all costs for the customer to use the recovery center in the event of a customer-declared disaster or customer test. For bid preparation purposes, the vendor should assume that the customer will need to use the recovery center for a minimum of three (3) days during the initial 12 months of the contract.**

IBM Response:

As soon you call IBM to Declare, we start working on assigning a recovery site. This action could include moving other clients who are in a recovery exercise, configuring systems, assigning mobile systems, etc. If you placed the call prematurely and the outage emergency doesn't materialize between the time you call us and the time IBM confirms the recovery site, and, you cancel the Declaration before IBM confirms, there is no charge. An Initial Recovery Charge (as specified in a Supplement) is incurred when IBM confirms back to you that IBM has scheduled a recovery site for your use, in response to your declaration of an outage emergency, and you confirm your acceptance.

Once your recovery site is confirmed to you, IBM makes your contracted Configuration available to you for up to the number of days specified in a Supplement for the Initial Recovery Charge. Thereafter, for each day, or part thereof, that IBM provides you the Configuration, a Daily Recovery Charge applies for up to a maximum of six (6) total weeks.

5. **The vendor shall itemize and describe any other costs involved in meeting the requirements of the RFQ. For example (and if applicable) the cost of installing and housing the customer-supplied router at the recovery center.**

IBM Response:

IBM has read and acknowledges the above.



6. Costs quoted shall be all-inclusive. No separate reimbursement will be made to the vendor for travel or any other expense.

IBM Response:

During an event supported by IBM, the following applies, as stated in the IBM Attachment for Multivendor Information Technology Recovery Services under Section 5 "Charges":

"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:

1. any associated charges for telecommunications services you select;
2. charges for additional hours and Exercises you schedule beyond your annual Recovery Exercise Allowance, as specified in the Supplement; and,
3. charges for unplanned 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,
4. 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, telephone and facsimile."

In addition, WVOT will be responsible for all travel and living expenses for your recovery team. Each IBM Business Continuity and Resiliency Services subscriber is responsible for shipment of the media containing their data to and from the recovery site, as well as shipment of any printed output that is created at the recovery site.

There are no additional charges for standard technical support provided by the IBM recovery site staff (as described in the subsection "Technical and Operational Support for Recovery and Recovery Exercise" of the IBM Attachment for Multivendor Information Technology Recovery Services).

IBM's travel and living expenses are "reasonable and actual travel expenses." For the hot-site services proposed, we are not expecting any travel.



COST SHEET

NOTE: Enter "0" or "zero" for any no-cost line items. Blank fields will be interpreted as no-cost.

VENDOR NAME IBM Business Continuity and Resiliency Services
VENDOR ADDRESS 300 Long Meadow Road, Sterling Forest, NY 10979
VENDOR CONTACT Kathy Johnson
VENDOR PHONE NO. 612-486-4149

MONTHLY SUBSCRIPTION COST:

\$8,186 PER MONTH x 12 MONTHS = \$98,232

COMPREHENSIVE DISASTER DECLARATION FEE NA

RECOVERY DAILY USAGE CHARGE

\$6,140 PER DAY x 3 DAYS = \$18,420

ANY OTHER COSTS (see Section VII, item 5)

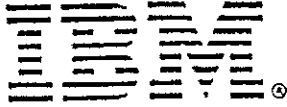
Housing included in monthly subscription cost above. Installation would be charged at an hourly rate estimated to be \$200/hour. Not to exceed \$400

Initial Recovery charge (includes 2 days) \$12,280

GRAND TOTAL COST \$129,132



IBM Customer Agreement



International Business Machines Corporation
IBM United States 1133 Westchester Avenue White Plains New York 10604

Notice to IBM Customers

January 22 1991

Introduction of IBM Customer Agreement

We are announcing today the restructuring of most of our standard contracts into a single IBM Customer Agreement. This announcement is in response to your suggestions that we shorten and simplify our contracts and be easier to do business with. The new Agreement allows us to include only once the common terms that were previously stated multiple times. Many of the current agreements and amendments have been completely eliminated. The result is a single, easy-to-understand contract that covers the majority of your transactions with us.

Previously separate contracts for machines, programs and services (such as Project Support Services) are now fully integrated into the IBM Customer Agreement. It also includes several Options (such as Volume Discounts) and accommodates electronic communications between us.

The IBM Customer Agreement provides an attractive, comprehensive warranty for our products and services that describes how we do business today. Included is your right to a full refund if we do not meet our obligations.

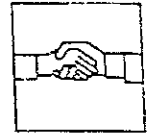
The substance of the IBM Customer Agreement and its Attachments, with minor exceptions, is unchanged from our current contracts. The words, however, have been rewritten to be concise and easy to read.

Effective Dates of New and Revised Documents

The IBM Customer Agreement and Attachments will automatically become effective on May 1, 1991. If you have any questions about the Agreement or its Attachments, please contact your IBM marketing representative. We will address any concerns you may have. Until they are resolved to your satisfaction, we will continue to transact business under your existing IBM contracts.

The IBM Customer Agreement follows along with a description of its Attachments. Your IBM marketing representative will promptly provide any Attachments you request.

IBM Customer Agreement



Thank you for doing business with us. We are committed to providing you with the highest quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

This IBM Customer Agreement (called the "Agreement") covers the major business transactions we may do with you, including:

- (a) sale of Machines;
- (b) license of Programs; and
- (c) provision of Services.

We also make several Options available to you concerning the Products and Services we provide under this Agreement, such as volume discounts.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement regarding these transactions, and replace any prior oral or written communications between us.

By signing below for our respective Enterprises, each of us agrees to the terms of this Agreement. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services you order under this Agreement are subject to it.

Agreed to:
Enterprise name:

By Chuck Polan
Authorized signature

Name (type or print): Chuck Polan
Date: May 28, 1993
Enterprise number: 9642000
Enterprise address: 1900 Kanawha Blvd., E.
Room E-119
Charleston, WV
25305

Agreed to:
International Business Machines Corporation
Armonk, New York 10504

By Steven J Casper
Authorized signature

Name (type or print): STEVEN J CAS
Date: MAY 27, 1993
Agreement number: JM71665
IBM Office number: JM7
IBM Office address: 500 LEE ST E
CHARLESTON, W
253

IBM Customer Agreement

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Customer Agreement

Part 1 - General

1.1 Definitions

Customer-set-up Machine is an IBM Machine that you set up according to our instructions

Date of Installation is the following:

- 1 for a Machine —
 - a the business day after the day we install it or, if you defer installation, make it available to you for installation;
 - b the second business day after the end of a Customer-set up Machine's standard transit allowance period. We will allocate a reasonable transit allowance period; or
 - c the second business day after the arrival of a non-IBM Machine
- 2 for a Program, the latest of —
 - a the day after its testing period ends (this does not apply to Program Packages);
 - b 10 days after we ship it; or
 - c the day, specified in a Transaction Document, on which we authorize you to make an Additional License Copy or a copy of a Distributed Feature

Designated Machine is the Machine, that you identify to us by type/model and serial (or plant order) number, on which you intend to use a Program for processing. When we specify that you do not have to provide this identification to us, the term Designated Machine means the single Machine on which you may use the Program at any one time

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the enterprise located in the United States or Puerto Rico

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that we may provide to you

Product is a Machine or a Program

Program is the following, including features and any whole or partial copies:

- 1 machine-readable instructions;
- 2 a collection of machine-readable data such as a data base; and
- 3 related materials, including documentation and listings, in any form.

The term "Program" includes an IBM Program and any non-IBM Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

Service is assistance or use of a resource (such as a network) we make available to you

Specifications is a document that provides information specific to a Product. For a Machine we call the document "Official Published Specifications." For a Program, we call it "Licensed Program Specifications" or "License Information."

Specified Operating Environment is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications

1.2 Agreement Structure

Attachments

Some Products and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments" which are also part of this Agreement. For example, we describe the additional terms for IBM Information Network Services in an Attachment. We make the Attachments available to you for signature.

Transaction Documents

For each order you place, we will provide to you the appropriate "Transaction Documents" that confirm the specific details of your order. The following are examples of Transaction Documents, with examples of the information they may contain:

1. supplements (Machine quantity and type ordered, price, estimated shipment date, and warranty period);
2. exhibits (eligible Products by category, discount schedules, and available contract periods);
3. addenda (selected contract-period duration, start date, and total quantity or revenue committed);
4. statements of work (project schedule, responsibilities, and charges); and
5. invoices (item, quantity, price, amount due, and other typical invoice information)

Conflicting Terms

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

Our Acceptance of Your Order

A Product or Service becomes subject to this Agreement when we accept your order. We accept your order by doing any of the following:

1. sending you a Transaction Document;
2. shipping the Product; or
3. providing the Service.

Your Acceptance of Additional Terms

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document;
2. using the Product or Service, or allowing others to do so; or
3. making any payment for the Product or Service.

1.3 Delivery

We will use our best efforts to meet your delivery requirements for Products and Services you order, and will inform you of their status. We pay normal transportation charges for Products we ship to you.

1.4 Electronic Communications

Each of us may communicate with the other by electronic means. Both of us agree to the following for all electronic communications:

1. an identification code (called a 'USERID') contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
2. an electronic document that contains a USERID is a signed writing; and
3. an electronic document or any computer printout of it, is an original when maintained in the normal course of business.

Electronic Data Interchange

We may provide Electronic Data Interchange (called 'EDI') Options to you. Electronic invoicing and electronic payment are examples of these Options. When using EDI Options each of us agrees:

1. when a bank is involved, to pay our respective bank charges and to promptly notify the other of any changes to the bank payment process; and
2. to promptly notify the other of any changes to the technology, process, or information upon which the EDI transactions are based.

We will specify respective responsibilities for the EDI Option you choose.

1.5 Prices and Price Changes

The following are the bases on which we may require the amount payable for a Product or Service to be paid, with an example of each:

1. one-time (the price of a Machine);
2. recurring (a monthly charge for Maintenance Services); or
3. a combination of both (an initial charge and a monthly license charge for a Program).

We will specify the amount and basis for the particular Product or Service.

Price Increases

We may increase recurring charges by giving you three months' written notice. An increase applies on the first day of the applicable invoice period on or after the effective date we specify in the notice.

We may increase one-time charges and hourly rates without notice. However, an increase to one-time charges does not apply to you if 1) we receive your order before the announcement date of the increase and 2) one of the following occurs within three months after the announcement:

1. we ship you the Product;
2. with our authorization, you make an Additional License Copy of a Program or a copy of a Distributed Feature; or
3. a Program's group-upgrade charge becomes due.

Price Decreases

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

1.6 Invoicing, Payment, and Taxes

We invoice:

- 1 recurring charges (other than usage charges) for a Program and for Maintenance Services in advance for the applicable invoice period;
- 2 usage charges following the period in which you incur them; and
- 3 all other charges when or after you incur them

For a Product with a one-time charge, payment is due on its Date of Installation. Recurring charges for a Product begin on its Date of Installation.

You agree to pay as we specify in the invoice. You also agree to pay amounts equal to any applicable taxes resulting from any transaction under this Agreement. This does not include taxes based on our net income. You are responsible for personal property taxes for each Product from the date we ship it to you.

1.7 Additional Charges

Depending on the particular Product, Service, or circumstances, additional charges may apply. For example, if we are required to use other than private automobile or scheduled public transportation to provide Maintenance Services to you, we charge an additional amount. We will notify you in advance if these charges apply.

1.8 Types of Service for Machines

We provide certain types of service for a Machine to keep it in, or restore it to good working order during its warranty period or while it is under Maintenance Services. The following terms apply to both warranty service and Maintenance Services.

Depending on the Machine, the service may be 1) a "Repair" service at your location (called "On-site") or at one of our service locations (called "Carry-in") or 2) an "Exchange" service, either On-site or Carry-in. We will inform you of the available types of service for a Machine.

Under Maintenance Services, you may select the type of service from those available for the Machine. We require that a Machine and its features have the same type of service.

We offer On-site types of service 24 hours a day, seven days a week. Carry-in types of service are available during the normal business hours of our service locations.

When a type of service involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. The replacement may not be new, but will be in good working order.

Under Carry-in service, instead of delivering the failing Machine to us, if you prefer, you may ship it (prepaid and suitably packaged) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense.

Under On-site Exchange service, depending on the nature of the failure, we may repair the failing Machine at your site instead of exchanging it.

We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit in those cases where we are responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner to have us service a Machine that you do not own;
2. where applicable, before we provide service —
 - a. follow the problem determination, problem analysis, and service request procedures that we provide;
 - b. secure all programs, data, and funds contained in a Machine;
 - c. inform us of changes in a Machine's location; and
 - d. for a Machine with Exchange service, remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
3. be responsible for loss of, or damage to, a Machine in transit in those cases where you are responsible for the transportation charges; and
4. on completion of Carry-in Repair service, connect a repaired Machine and verify its operation.

1.9 Patents and Copyrights

If a third party claims that a Product we provide infringes a patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you:

1. promptly notify us in writing of the claim; and
2. allow us to control, and cooperate with us in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify or replace it. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will then give you a credit equal to your net book value for the Product, provided you have followed generally-accepted accounting principles.

This is our entire obligation to you regarding any claim of infringement.

Claims for Which We are Not Responsible

We have no obligation regarding any claim based on any of the following:

1. your modification of a Product or a Program's use in other than its Specified Operating Environment;
2. the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide; or
3. infringement by a non-IBM Product alone, as opposed to its combination, operation, or use as part of a system of Products that we provide to you.

1.10 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us, we are liable only for:

1. payments referred to in our patent and copyright terms described above;
2. bodily injury (including death), and damage to real property and tangible personal property; and

- 3 the amount of any other actual loss or damage up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim

This limit also applies to any of our subcontractors and Program developers. It is the maximum for which we are collectively responsible.

Items for Which We are Not Liable

Under no circumstances are we liable for any of the following:

- 1 third-party claims against you for losses or damages (other than those under the first two items listed above);
- 2 loss of, or damage to, your records or data; or
- 3 economic consequential damages (including lost profits or savings) or incidental damages, even if we are informed of their possibility

1.11 Mutual Responsibilities

Both of us agree that under this Agreement:

- 1 neither of us will use the other's trademark, trade name, or other designation in any promotion or publication without prior written consent;
- 2 all information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
- 3 each is free to enter into similar agreements with others;
- 4 each grants the other only the licenses specified. No other licenses (including licenses under patents) are granted;
- 5 each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations; and
- 6 neither of us will bring a legal action more than two years after the cause of action arose.

1.12 Your Other Responsibilities

You agree:

- 1 not to assign this Agreement or your rights under it, delegate your obligations, or resell any Service without prior written consent. Any attempt to do so is void;
- 2 to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies —
 - a you are arranging lease-back financing for the Machines, or
 - b you purchase them without any discount or allowance, and do not remarket them in competition with our authorized remarketers;
- 3 to allow us to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts we remove become our property;
- 4 that you are responsible for the results obtained from the Products and Services;
- 5 to comply with all applicable government export laws and regulations; and
- 6 to provide us with full, free, and safe access to your facilities for us to fulfill our obligations. If you become aware of any unsafe conditions or hazardous materials to which our personnel would be exposed at any of your facilities, you agree to promptly notify us.

1.13 Your Additional Rights

You may have additional rights under certain laws (such as consumer laws) which do not allow the exclusion of implied warranties or the exclusion or limitation of certain damages. If these laws apply, our exclusions or limitations may not apply to you.

1.14 IBM Business Partners

We have signed agreements with certain organizations (called 'IBM Business Partners') to promote, market, and support some of our Products and Services. We have chosen these organizations because of their skills and experience in a particular field.

When you order our Products or Services (marketed to you by these organizations) under this Agreement, we confirm that we are responsible for providing them to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of these organizations, 2) any additional obligations they may have to you, or 3) any products or services that they (and not us) may supply to you.

1.15 Changes to the Agreement Terms

In order to maintain flexibility in our Products, Services, and Options, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders (those we receive on or after the date of the notice) and to on-going transactions, such as licenses and Services.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any order or written communication from you are void.

1.16 Agreement Termination

You may terminate this Agreement on written notice to us following the expiration or termination of all your obligations.

Either of us may terminate this Agreement if the other does not comply with any of its terms provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.17 Geographic Scope

All your rights, all our obligations, and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United States and Puerto Rico.

1.18 Governing Law

The laws of the State of New York govern this Agreement.

Customer Agreement

Part 2 - Warranties

2.1 The IBM Warranties

Warranty for IBM Machines

For each IBM Machine, we warrant that it:

- 1 is free from defects in materials and workmanship; and
- 2 conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period. We calculate its expiration from the Machine's Date of Installation.

During the warranty period, we provide warranty service under the type of service we designate for the Machine or under the alternative service you select under Maintenance Services.

For us to provide warranty service for a feature, conversion, or upgrade, we require that the Machine on which it is installed be 1) the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

During the warranty period, we manage and install engineering changes that apply to the Machine.

If a Machine does not function as warranted during the warranty period, we will repair or replace it without charge. If we are unable to do so, you may return it to us and we will refund your money.

Warranty for IBM Programs

For each warranted IBM Program, we warrant that:

- 1 we have the right to license it; and
- 2 it conforms to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available.

During the warranty period, we provide warranty service, without charge, for a Program through Program Services. Program Services are available for a warranted Program for at least one year following its general availability. Therefore, the duration of warranty service depends on when you obtain your license. If, during the first year after you obtain your license, we are unable to make the Program function as warranted, you may return it to us and we will refund your money.

Warranty for IBM Services

For each IBM Service, we warrant that we perform it:

- 1 in a workmanlike manner; and
- 2 according to its current description contained in this Agreement, an Attachment, or a Transaction Document.

Warranty for Systems

Where we provide Products to you as a system, we warrant that they are compatible and can operate with one another

Warranty for Integrated Systems

For each integrated system we deliver to you under a Statement of Work for Systems Integration Services, we warrant that it meets its Completion Criteria as specified in the Statement of Work.

The warranty period for an integrated system is a fixed period as specified in the Statement of Work. It begins on the date we deliver the system to you.

If an integrated system does not function as warranted during the warranty period, we will correct the deficiency without charge. If we are unable to do so, you may return the system to us and we will refund your money.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, our statement of limited warranty included with the Machine applies in place of these Machine warranties.

Misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which we are not responsible may void the warranties.

THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.3 Items Not Covered by Warranty

We do not warrant uninterrupted or error free operation of a Product or Service.

We will identify IBM Products and Services that we do not warrant.

We provide non-IBM Products and Services on an "AS IS" basis. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

Customer Agreement

Part 3 - Machines

3.1 Title

When we accept your order, we agree to sell you the Machine described in a Transaction Document. We transfer title to you or, if you choose, your lessor when we ship the Machine. However, we reserve a purchase money security interest in the Machine until we receive the amounts due. For a feature, conversion or upgrade involving the removal of parts which become our property, we reserve the security interest until we receive the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

3.2 Risk of Loss

We bear the risk of loss for the Machine through its Date of Installation. Thereafter, you assume the risk.

3.3 Production Status

Each Machine is manufactured from new parts, or new and serviceable used parts (which perform like new parts). In some cases, the Machine may not be new and may have been previously installed. Regardless of the Machine's production status, our warranty terms apply.

3.4 Installation

For the Machine to function properly, it must be installed in a suitable physical environment. You agree to provide an environment meeting our specified requirements for the Machine.

We design our standard installation procedures to ensure that each Machine we install is in good working order and meets its Specifications. We will successfully complete these procedures before we consider the Machine installed.

You are responsible for setting up a Customer-set-up Machine (we provide instructions to enable you to do so) and for the installation of a non-IBM Machine.

Machine Features, Conversions, and Upgrades

We sell features, conversions, and upgrades for installation only on designated, serial-numbered Machines. You represent that you have the permission of the owner (if you are not the owner of the Machine) and any lien holders to 1) install features, conversions, and upgrades and 2) transfer removed parts to us.

Some of these transactions (called "Net-Priced" transactions) include associated replacement parts. We provide these parts on an exchange basis. All removed parts in a Net-Priced transaction become our property. For a Net-Priced transaction, you agree to allow us to install it within 30 days of its delivery and to recover the removed parts. Otherwise, we may terminate the transaction and you must return the feature, conversion, or upgrade to us at your expense.

3.5 Licensed Internal Code

Certain Machines we specify (called Specific Machines) use Licensed Internal Code (called "Code") We own copyrights in Code We own all copies of Code including all copies made from them

We will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with only the Specific Machine designated by serial number, for which the Code is provided We license the Code to only one rightful possessor at a time

Under each license, we authorize you to do only the following:

- 1 execute the Code to enable the Specific Machine to function according to its Specifications;
- 2 make a backup or archival copy of the Code (unless we make one available for your use) provided you reproduce the copyright notice and any other legend of ownership on the copy You may use the copy only to replace the original when necessary; and
- 3 execute and display the Code as necessary to maintain the Specific Machine

You agree to acquire any replacement for, or additional copy of Code directly from us in accordance with our standard policies and practices You also agree to use that Code under these terms

You may transfer possession of the Code to another party only with the transfer of the Specific Machine If you do so, you must 1) either give the other party all your copies of the Code or destroy them, and 2) give the other party a copy of this page with the Specific Machine's identification information filled in below We license the other party when it accepts these terms by initial use of the Code These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine

Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example any of the following:

- 1 otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;
- 2 reverse assemble, reverse compile, or otherwise translate the Code;
- 3 sublicense or assign the license for the Code; or
- 4 lease the Code or any copy of it

INFORMATION FOR SUBSEQUENT LICENSEE OF LICENSED INTERNAL CODE

This page is copied from the IBM Customer Agreement and is provided to the subsequent licensee when Code is transferred

The Specific Machine being transferred is identified as:

Type/Model _____ Serial Number _____

The following definitions are provided for the subsequent licensee of the Code:

- 1 'We' means International Business Machines Corporation (IBM);
- 2 Transaction Document does not apply to you The above Type/Model and Serial Number identify the Specific Machine to you;
- 3 'You' means the subsequent licensee of the Code; and
- 4 "Specifications" means IBM's Official Published Specifications

Customer Agreement

Part 4 - Programs

4.1 Grant of License

When we accept your order, we grant you a license for the Program. Programs are copyrighted and licensed (not sold). We do not transfer title to Programs to you.

4.2 License Details

Under each license, we authorize you to:

- 1 use the Program's machine-readable portion on only the Designated Machine, unless —
 - a the Designated Machine is inoperable. You may then use the Program on a backup Machine,
 - b the Designated Machine cannot assemble or compile the Program. You may then assemble or compile it on another Machine,
 - c we grant an "Installation License." You may then use the Program on any other Machine in the same or adjoining rooms as the Designated Machine, or
 - d we grant a "Location License." You may then use the Program on any other Machine in the same building with the same mailing address as the Designated Machine.

If you change the Designated Machine, you agree to notify us of the change and its date;

- 2 store the Program's machine-readable portion in, transmit it through, and display it on, Machines associated with the Designated Machine;
- 3 do the following to support your authorized use as described above —
 - a modify the Program's machine-readable instructions or data, or merge them into another Program, and
 - b make copies of the Program, provided you reproduce the copyright notice and any other legend of ownership on each copy or partial copy; and
- 4 use any portion of the Program we mark restricted (for example, "Restricted Materials of IBM") only to —
 - a resolve problems related to the use of the Program, and
 - b modify the Program so that it will work together with other products.

You agree to comply with any additional terms (for example, a usage restriction) that a Program's Specifications may contain. We provide the Specifications to you with the Program. For an "AS IS" Program, any additional terms are contained in a document called "Notice of Availability."

Actions You May Not Take

You agree not to do any of the following:

- 1 sublicense, assign, or transfer the license for any Program;
- 2 distribute any Program to any third party; or
- 3 reverse assemble, reverse compile, or otherwise translate any Program.

4.3 Distributed Features

Some Programs have features (called "Distributed Features") that are designed to work with those Programs (called "Associated Programs"). After we accept your order for a Distributed Feature, we authorize you to:

- 1 make a copy of the Distributed Feature and its documentation; and
- 2 distribute the copy to, and use it on, a Machine other than the Designated Machine of the Associated Program. You may use the copy on only one Machine at a time. Persons using a Machine outside of your Enterprise may use the copy only to access the Associated Program.

4.4 Additional License Copies

You may order additional licenses for Programs. If you prefer, for each license we grant rather than shipping you another copy of the Program, we will authorize you to make an additional copy (called an "Additional License Copy").

For some Programs, you may make a copy under a Distributed System License Option (called a "DSLO" license). We charge less for a DSLO license than we do for the original license (called the "Basic" license). In return for the lesser charge, you agree to do the following while licensed under a DSLO:

- 1 have a Basic license for the Program;
- 2 provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- 3 distribute to, and install on, the DSLO's Designated Machine, any release correction or bypass that we provide for the Basic license.

4.5 Program Testing

We provide a testing period for certain Programs to help you evaluate if they meet your needs. The testing period for a Program starts 1) 10 days after we ship it or 2) on the day we authorize you to make an Additional License Copy. We will inform you of the duration of the Program's testing period.

For the first order for each Distributed Feature, the testing period is the same as the Associated Program.

We do not provide a testing period for a Program under a DSLO license.

4.6 Program Packages

We provide certain Programs together with their own license agreements. These Programs (called "Program Packages") are licensed under the terms of the agreements provided with them. This Agreement's patent and copyright terms apply to IBM Program Packages.

For a Program Package, we may specify that:

- 1 Additional License Copies apply. If so, these copies are subject to the terms of the Program Package's agreement, except that you may not transfer them; and
- 2 a testing period applies. If so, and you return the Program Package to us before the end of the testing period, we will refund your money.

If a Program Package has Distributed Features, this Agreement's terms regarding Distributed Features apply.

4.7 Program Protection

For each Program, you agree to:

- 1 if it is a data base allow access to it only to your employees;
- 2 ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs; and
- 3 maintain records of all copies

4.8 Program Services

We provide Program Services for warranted Programs and for selected other Programs. If we can reproduce your reported problem in the Specified Operating Environment, we will issue defect correction information, a restriction, or a bypass. We provide Program Services for only the unmodified portion of a current release of a Program.

We provide Program Services 1) on an on-going basis (with at least six months' written notice before we terminate services for a Program), 2) until the date we specify or 3) for a period we specify.

4.9 Variable-Charge Programs

We may place a Machine in a Machine group. The charges for some Program licenses depend on the group of the Designated Machine. We call these Programs "Variable-Charge" Programs. Variable charges include graduated charges and processor-based charges. We will specify the group for a Machine and will inform you of any changes.

For these licenses, the following apply:

- 1 if you change (including upgrade or downgrade) a Designated Machine to a Machine in another group, you may incur a group-upgrade charge or a changed recurring charge. You agree to promptly notify us of the date of such a change;
- 2 if we reassign a Designated Machine to a Machine group with different charges, Program licenses with one-time charges due or paid before the reassignment are not affected. Otherwise our price change terms apply; and
- 3 if a change or reassignment results in a lower charge, we do not give credits or refunds for one-time charges already due or paid.

4.10 License Termination

You may terminate the license for a Program on one month's written notice or at any time during the Program's testing period. For some Programs, if you terminate the license and replace that Program with another we specify, we only require you to pay an upgrade charge.

We may terminate any license we grant in this Part if you do not meet your obligations regarding Programs.

You agree to destroy all copies of the Program within three months after license termination. However, you may keep a copy in your archives.

IBM Customer Agreement

Part 5 - Services

5.1 Maintenance Services

You may select the type of service from those available for the Machine. When we accept your order, we agree to service the Machine described in a Transaction Document. Based on the type of service, we will restore the Machine to good working order or exchange it. We may also perform preventive maintenance including lubrication adjustments and replacement of parts. We manage and install engineering changes that apply to the Machine.

We will inform you of the date on which Maintenance Services begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may 1) have us restore it for a charge or 2) withdraw your request for Maintenance Services and we will refund any amounts you have paid to us for its service.

For a Machine under a usage plan, you agree to provide us with the meter reading as of the last working day of the period that the minimum maintenance charge covers.

We provide Maintenance Services for selected non-IBM Machines only when they are connected to certain IBM Machines. When a type of service involves the exchange of a non-IBM Machine, the replacement may not be identical.

Maintenance Services do not cover accessories and certain parts such as frames and covers. In addition, Maintenance Services do not cover service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, or failure caused by a product for which we are not responsible.

Alternative Service During Warranty

For certain Machines, at any time during the warranty period, you may select a different type of service from that which we designate for the Machine. For example, if you prefer On-site service to Carry-in, it may be available. We will inform you of the available types of service for the Machine and the available alternative service periods. We provide the alternative type of service for an additional charge. When the alternative service ends, we will continue Maintenance Services for the Machine under the same type of service you selected.

Maintenance Services Termination

You may terminate Maintenance Services for a Machine on one month's written notice to us under any of the following circumstances:

- 1) after it has been under Maintenance Services for at least six months;
- 2) if you remove it from productive use within your Enterprise;
- 3) as of the effective date of an increase in Maintenance Services charges; or
- 4) if you terminate coverage for a Maintenance Service Option under our terms for 1) removal of a Machine type from eligibility or 2) increased total adjusted charges for Maintenance Services.

We may terminate Maintenance Services for a Machine on three months' written notice provided it has been under Maintenance Services for at least one year.

Either of us may terminate service for any Machine if the other does not meet its obligations concerning Maintenance Services. On termination of service for a Machine, we will give you any applicable credit.

5.2 Continuing Support Services

We provide Continuing Support Services on a contract-period basis to assist you in such areas as improving the availability of your systems and improving your productivity. We provide the terms specific to a Service in an Attachment. If we make a change to the terms of an Attachment that 1) affects your current contract period and 2) you consider unfavorable on your request we will defer it until the end of that contract period.

We will specify the eligible Products, applicable prerequisites and minimum commitments, exit-option percents, and available contract periods for a Service. We will also inform you periodically of any changes. These changes apply only to orders that we confirm on or after the effective date of the change.

When we accept your order, we will confirm the specific details of the Service in a Transaction Document. You may select a start date for the Service that is within three months following the effective date we specify in the Transaction Document.

During a contract period, we may increase charges. An increase becomes effective on the next anniversary of the start of a contract period following the effective date we specify in the notice. When an increase results in a change to your total monthly charge for a Service of more than the exit-option percent we specify, you may terminate that Service on the effective date of the increase. Adjustment or termination charges do not apply in this case.

You may request a change to the Services you have selected on one month's notice. If we agree, we will confirm the change to you with applicable adjustments in charges.

Each of us agrees to notify the other (before your current contract period expires) if they do not intend to renew.

Continuing Support Services Termination

You may terminate a Continuing Support Service by providing us one month's written notice upon fulfillment of any minimum commitments.

The termination of Services with contract periods longer than one year results in adjustment charges. In this case, you agree to pay the lesser of:

- 1 the difference between the total charges you paid through the termination date and those you would have paid for the shorter contract period;
- 2 the monthly charge multiplied by the applicable adjustment charge factor; or
- 3 the total charges remaining to complete the contract period.

5.3 Project Support Services

The Project Support Services we make available to you include providing general assistance on a technical task (such as writing programs), providing consulting services, acting as a prime contractor to deliver an information handling function, and providing Systems Integration Services to you.

When we accept your order, we agree to provide the Services described in the Statement of Work. We require a separate Statement of Work, signed by both of us, for each project.

We manage the project unless the Statement of Work specifies that you manage it. If you are responsible, then we only provide Services to assist you.

The Statement of Work includes:

1. our respective responsibilities;
2. an estimated schedule which we provide for planning purposes;
3. the specific conditions, if any, (called the "Completion Criteria") that we are required to meet to fulfill our obligations; and
4. applicable charges and any other terms

Each of us agrees to make reasonable efforts to carry out our respective responsibilities according to the estimated schedule. However, if Completion Criteria are applicable, then the project is complete when we meet those criteria.

Changes to the Statement of Work

When both of us agree to change a Statement of Work, we will prepare a written description of the change (called a "Change Authorization"). The Change Authorization becomes effective when we provide it to you. It need not be signed, unless either of us requests signature.

Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the scope of the requested change, we may charge you for our effort to analyze it. We will then give you a written estimate of the charges for the analysis. We will perform the analysis only on your written authorization.

Personnel

Each of us will authorize a person to represent us during the project. Each will 1) address all notices to the other's representative and 2) promptly notify the other in writing if this person is replaced. Each of us is responsible for supervising and controlling only our own personnel.

We will try to honor your requests regarding the assignment of our personnel to your project. However, we reserve the right to determine the assignment of our personnel.

Ownership and License

During a project, we may deliver to you work product (called "Materials"), such as programs, program listings, programming tools, documentation, reports, and drawings.

The Statement of Work will specify if Materials are applicable to the project. It will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree.

Type I Materials are those, created during the project, in which you will have all right, title, and interest (including ownership of copyright). We will retain one copy of the Materials. You grant us 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those in which we or third parties have all right, title, and interest (including ownership of copyright). We will deliver one copy of the Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (internally only) copies of Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership or any copies made under the licenses granted in this Part.

Project Support Services Termination

You may terminate a project on written notice to us. We may terminate a project if you do not meet your obligations concerning it. Upon termination, we will stop our work in an orderly manner as soon as practical.

You agree to pay us for all Services we provide and any Materials we deliver through the project's termination. Payment includes any charges we incur in terminating subcontracts.

Additional Terms for Systems Integration Services

When the Statement of Work specifies Systems Integration Services, we provide you with an integrated system that may consist of a combination of Products, Services, Materials, and other items. We design, develop, deliver, install, and support the system as described in the Statement of Work.

The Statement of Work contains the Completion Criteria. We will inform you when we meet each of them. You then have 10 days to inform us if you believe that we have not met the Completion Criteria.

5.4 IBM Information Network and Other Services

IBM Information Network Services

The IBM Information Network (called "IBM IN") Services we make available to you include access to, and use of, IBM IN machines, programs, networking facilities, and associated communications and support services. We provide the terms specific to IBM IN Services in an Attachment.

On-line Services

We make on-line Services available to you, including access to certain of our information data bases. We provide these Services to you through a connection to IBM IN. We provide the terms specific to an on-line Service in an Attachment. We may specify that you accept the terms of IBM IN Services as a prerequisite to an on-line Service.

Other Services

We make other Services available to you that are not associated with the Services described in this Part. For these Services, we provide all the additional terms in Attachments.

Customer Agreement

Part 6 - Options

6.1 Volume Discounts

We provide discounts for certain Products based on the volume of business you agree to do with us (called your "Commitment") during a contract period. You may make a Commitment based on either Product quantity or revenue. Revenue for a Product is its single-unit charge, less any discounts or allowances.

We will specify the eligible Products, their categories, available discount percents and contract periods, upper-limit percents, and adjustment charge factors. We will inform you periodically of any changes. An unfavorable change (and all changes related to it) applies to an existing Commitment only if you accept it in writing. Related changes become effective at the same time. We will also inform you if we withdraw eligible Products from marketing. We then accept orders you place for these Products subject to their availability.

Unless we specify otherwise, we do not discount Program upgrades, Program features ordered separately from Programs, accessories, or field-installed Machine features conversions, or upgrades.

End User Certification

You agree to acquire the Products for use only within your Enterprise and not for remarketing. We call this representation "End User Certification." We provide the discounts to you based on End User Certification.

How You May Obtain the Discounts

If you wish to obtain the discounts, you agree to sign an Addendum specifying your Commitment, and selected contract-period start date and duration.

During the contract period, you may increase your Commitment or extend the contract period (subject to our approval) by signing a revised Addendum. If you extend, you agree to increase your Commitment so that the new discount percent is at least equal to your current discount percent. Any increased discount percent applies to all eligible Products for which Date of Installation is on or after the date we receive your signed Addendum.

How We Apply the Discounts

We apply the discount to the single-unit charges of eligible Products that you acquire from us during the contract period. The charges are the lesser of 1) those generally available at the time of acquisition or 2) the announced charges in effect on the date we receive the initial Addendum, subject to our price change terms described below.

We count specified Products that you acquire from our authorized remarketers when we receive the required certification. Adjustment charges do not apply to these Products.

We may place some Products in a dependent category with an associated controlling category. To determine the discount percent applicable to either category, we count quantities or revenue for only those Products in the controlling category.

Price Changes

During a contract period, we may increase or decrease charges. We apply your discount to the new charges as follows:

- 1) we establish a maximum charge (called an "Upper Limit") for each Product in a committed category for each year of a contract period. We determine the Upper Limit by increasing the announced charge in effect, as of the date we receive the initial Addendum.

by a certain amount. We calculate this amount by multiplying that charge by the upper-limit percent we specify at the time of your Commitment;

- 2 for an increase, we apply the discount to either the increased charge or the Upper Limit whichever is less; and
- 3 for a decrease, we apply the discount to the decreased charge, provided you accept any related changes in terms we may have made after your Commitment. Otherwise, you may select 1) the decreased charge without discount or 2) the discounted charge available to you before the decrease

Adjustment Charges

If you have not met your Commitment by the end of the contract period, you agree to pay adjustment charges. The adjustment charge for each Product is either:

- 1 the difference between the discounted amount we charged you and the discounted amount which you were entitled to receive; or
- 2 the result of multiplying the adjustment charge factor by the number of discount percentage points between what we gave you and what you were entitled to receive.

We will inform you which method we use for a particular Product.

For a revenue-based Commitment, the total of the adjustment charges will not be more than the difference between your Commitment and the actual revenue you attained.

International Discounts

For our international customers, we provide volume discounts based on worldwide Commitments. To allow you to participate in such a Commitment, this Agreement may be modified by a signed international agreement. You, your international enterprise coordinator, and we will sign the relevant Transaction Document, unless the coordinator exempts you from signing. That Transaction Document becomes part of this Agreement.

6.2 Maintenance Service Options

We provide Maintenance Service Options for certain Machines. If you wish to obtain the benefit of lower charges available under an Option, you agree to assume additional, specified responsibilities. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Machine types, eligible types of service, available discount percents and contract periods, exit-option percents, and notice requirements for termination of each contract period as applicable to each Option. We will also inform you periodically of any changes. We will defer an unfavorable change (and all changes related to it) until the end of your contract period, if you request it in writing before the effective date of the change. Related changes become effective at the same time.

6.3 Payment Options

Extended Maintenance Option

You may select the Extended Maintenance Option (called the "EMO") for certain Machines. Under this Option, we adjust your Maintenance Services charges based on your prepayment of those charges during an available contract period.

We will specify the eligible Machine types and available contract periods. We will also inform you periodically of any changes. A change applies only to Machines you add under this Option on or after the effective date of the change.

The Transaction Document will list the Machines covered and the dates of coverage for the contract period you have selected for each Machine.

You may select EMO in addition to other Maintenance Service Options. We then adjust the Machine's EMO charge based on the applicable discounts which you are entitled to receive under those Options. While under this Option you agree to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge.

For a Machine not yet installed or set up, coverage starts on its Date of Installation. For an installed Machine, coverage starts on a mutually-agreed-to date. If applicable, the contract period includes the Machine's warranty period.

We calculate the EMO charge for a Machine using the announced Maintenance Services charges and any applicable discounts in effect for the Machine when coverage begins. EMO charges are not refundable after coverage has started for the Machine.

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

If we increase the EMO charge, the increase does not apply to a Machine not yet installed or set up, unless we give you at least three months' notice before its scheduled date of shipment. If we decrease the EMO charge before coverage has begun for a Machine you receive the benefit of the decrease.

We will give you at least three months' notice of a Machine's eligibility for renewal. At the end of your contract period we will continue Maintenance Services for the Machine (if available), unless you request us not to do so.

If you transfer coverage for a Machine to a third party, you agree to inform that party 1) of the applicable terms of this Agreement and 2) that it must notify us in writing of the transfer, the location of the Machine, and acceptance of coverage. If that party does not wish to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge, you agree to pay the transfer charge that we specify.

Invoicing Options

We make Invoicing Options available to you for certain Products and Services to provide flexibility in payment terms. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Products, Services, and charges, and the available contract periods, invoicing schedules, and environments which may be covered by an Option. We will also inform you periodically of any changes.

Together, we will estimate your requirements for the applicable Products and Services. We use this estimate to determine the total charges that we will invoice, distributed according to the schedule you select. These invoiced amounts replace the applicable charges otherwise due. Depending on the Option, the total charges may be subject to adjustments.

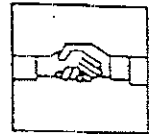
The Transaction Document signed by both of us will list the date from which we provide the selected Option to you and its other details.

6.4 Special Options

In order to meet your specific requirements, we may provide Special Options to you. Under these Options, we are willing to provide special terms and tailor our processes for you. We will describe our mutual commitments under a Special Option in a Transaction Document.

IBM Customer Agreement

Signature Page for Attachments



The following Attachments to the IBM Customer Agreement contain additional terms. Copies of the Attachments which you select (by marking the appropriate space below) are included with this page.

Products

- ES/Express Preload (Z125-4146-02)
- IBM Entry End User/370 License (Z125-4379-02)
- Licensed Program Support (Z125-3920-03)
- Trial or Loan of Products (Z125-4135-02)
- MVS/ESA Migration Offering (Z125-3905-09)
- Rental of IBM Machines (Z125-8301-01)
- Trade-Ins (Z125-4134-01)

Continuing Support Services

- Business Recovery Services (Z125-8306-03)
- End User Support Services (Z125-4301-01)
- Network Traffic Analysis Services (Z125-4290-01)
- Problem Management Productivity Services (Z125-4304-01)
- SystemXtra Services (Z125-4294-03)
- SoftwareXcel Services (Z125-4298-02)

IBM Information Network and Other Services

- FASTService Services (Z125-8287-01)
- IBM Information Network Services (Z120-3242-04)
- IBMLink Services (Z125-4555-01)
- Multiple Vendor Services (Z125-4150-02)

Options

- Central Facility Maintenance Service Option (Z125-3333-05)
- CSO and MRSO Options (Z125-3927-04)
- Estimated Billing Option (Z125-4116-01)
- Volume Maintenance Option (Z125-3777-02)

Miscellaneous

- Early Support Programs (Z125-3990-01)
- Educational Allowance (Z125-3083-03)
- IDNX* Licensed Internal Code (Z125-4041-01)
- State & Local Government (Z125-4205-02)
- Tempest Machines (Z125-9081-01)

* IDNX is a registered trademark of Network Equipment Technologies, Inc

By signing below for our respective Enterprises, each of us agrees to the terms of the IBM Customer Agreement and the included Attachments. Once signed, any reproduction of this page or an Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:
Enterprise name:

Agreed to:
International Business Machines Corporation
Armonk, New York 10504

By Chuck Polan
Authorized signature

By Steven J. Casper
Authorized signature

Name (type or print): Chuck Polan

Name (type or print): STEVEN J. CASPER

Date: May 28, 1993

Date: MAY 27, 1993

Enterprise number: 9642000

IBM Customer Agreement number: JM71665

Enterprise address: 1900 Kanawha Blvd, E.

IBM Office number: JM7

Room E 119
Charleston, WV
25305

IBM Office address: 500 LEE ST EAST
CHARLESTON, WV
25301

Customer Agreement

Attachment for Licensed Program Support

These terms are in addition to those of the IBM Customer Agreement. You accept these terms by signing the Signature Page for Attachments or by using, or making any payment for, either of the offerings described below.

We provide licensed program support (called "Support") for current releases of eligible Programs specified in an Exhibit. Two offerings (called "Support Offerings") are provided under these terms:

1. Support Offering 1, for Programs for which we provide Support at no charge for a period of time and for a charge thereafter; and
2. Support Offering 2, for Programs for which Program Services at no additional charge have been terminated and Support for a charge has been announced

Support may include:

1. Program Services;
2. technical assistance (response to telephone inquiries concerning the installation, use, operation or function of Programs);
3. Program updates (Program enhancements, preventive service or new releases); or
4. regulatory changes (information on, or changes required by, the United States Government)

1. General Terms

The following apply only to Support Offering 1:

1. we provide Support for a Program at no charge during the Program's testing period if any and for an Initial Period (as specified in an Exhibit) beginning on the Program's Date of Installation and
2. if you terminate your license for a Program and later obtain another license for that Program with a Designated Machine in the same installation (or, for a location license in the same location), there will not be an Initial Period for Support for the later license

The following apply to Support Offerings 1 and 2:

1. we provide Support for a charge for an Extension Period (as specified in an Exhibit);
2. we will notify you of the date when the first Extension Period begins. Subsequent Extension Periods will begin automatically on the day following the end of the preceding Period, unless you request otherwise;
3. you may request that an Extension Period begin later than specified under these terms. In such event, we will also charge you a reinstatement charge;
4. we will, upon your request, adjust the length of an Extension Period so that the Extension Periods for all your Programs end on the same date;

- 5 we will apply an unfavorable modification in terms only to the Initial and Extension Periods which begin on or after the modification's effective date;
- 6 we may, if applicable, charge you a process charge for the distribution of machine-readable Program materials during the Initial and Extension Periods. You may make additional copies of such materials (rather than paying additional process charges) if you require them;
- 7 price changes whose effective date occurs within an Extension Period will not apply during that Extension Period;
- 8 if we discontinue Support we will either adjust your Extension Period or prorate and refund any applicable charges. If you terminate Support for a Program during an Extension Period, we will refund a prorated portion of the applicable charges less any applicable termination charges (as specified in an Exhibit); and
9. we may provide Support through a telecommunications link

2. Our Responsibilities

We will notify you:

- 1 if, upon the availability of a subsequent Program release, we discontinue Support for the prior releases; and
- 2 (as specified in an Exhibit) if we discontinue Support.

3 Your Responsibilities

You agree to:

- 1 obtain Support for all copies of a Program installed within a location during an Extension Period. In addition, for Support Offering 2, you agree to obtain Support for all DSLO licenses you acquire through a Basic license at the location;
- 2 have specified equipment or Programs installed at your location if Support is provided through a telecommunications link; and
- 3 provide us with written notice if you wish to terminate Support upon your receipt of our renewal notification. At any other time, you may terminate these Services by giving us one month's written notice.

IBM Customer Agreement

Attachment for State and Local Government

These terms are in addition to those in the IBM Customer Agreement and any other Attachments and are available to you as a qualified State and Local Government customer. You accept these terms by signing the Signature Page for Attachments or by using, or making any payment for, the Product or Service

1. Price Changes

We apply an increase in recurring charges on the first day of the applicable invoice period:

- 1 on or after the effective date specified in the notice; or
- 2 in your fiscal year immediately following the fiscal year in which the notice is given;

whichever is later

We do not apply an increase in one-time charges to an order we receive from you before the announcement date of the increase if:

1. we ship the Product no later than its estimated shipment date in effect at the time of the announcement; or
2. for an Additional License Copy of a Program or a copy of a Distributed Feature, the date you make the copy is on or before the date you were authorized to make it

2. Volume Discounts

The discount percents we specify are based on the volume of business you reasonably expect to do with us (called an "Estimate") during the applicable contract period. The Estimate replaces the Commitment. Adjustment charges will not apply.

3. Services and Options

You may terminate Services or Options, or withdraw Machines from Maintenance Service immediately prior to the start of any fiscal year for which funds have not been appropriated. You agree to request such funds from the applicable legislative body. Termination and adjustment charges will not apply.

Charges for Qualified Location reviews, payable under the Corporate Service Option, do not apply.

Upon your request, we will defer an unfavorable change to Service or Option terms until the end of your current fiscal year. You agree to make this request in writing before the effective date of the change.

4. Governing Law

The laws of your State govern this Agreement.

Customer Agreement

Attachment for the Educational Allowance

These terms are in addition to those of the IBM Customer Agreement. You accept these terms by signing the Signature Page for Attachments, by using the Products as described below (or allowing others to do so), or by making any payment for the Products.

As a qualifying educational institution (called "Institution"), you are eligible for National Education Prices (called "NEP"), National Education License Fees (called "NELF") or an Educational Allowance (called "EA"), for specified Products

1. Qualification

We will notify you if you are approved as an Institution. Such approval is granted on an individual customer basis and not by Enterprise. You agree to notify us if your eligibility status changes (e.g. you lose your accreditation or non-profit status). In this event, you may no longer be an Institution.

To qualify for the NEP, NELF or EA you agree to use the Products for "Internal Use." This means use by your faculty, staff, students, or employees for instruction, academic research, and internal administrative work. Any other use is considered to be "External Use."

2. Eligible Charges

Selected Machines are eligible for NEP instead of the standard purchase price. Selected Programs are eligible for NELF instead of the standard one-time charge. Other selected Products are eligible for the EA. The NEP, NELF or EA cannot be combined with any other discount or allowance.

The EA applies to the purchase, rental or lease prices of eligible Machines. It also applies to the recurring, one-time initial, or upgrade charges of eligible Programs. We derive the EA by multiplying the EA percent (specified in the applicable Transaction Document) by the charge for the Product.

Not all charges qualify for the EA. For example, the following charges do not qualify:

1. monthly usage charges and Maintenance Services charges for Machines;
2. process charges and charges for related Program materials; and
3. charges for Services

3. Price Changes

We will give you prompt notice if we change NEP or NELF. If we change or eliminate the EA we will give you three months' notice. Otherwise, the price change terms of the Agreement apply.

4. Services

Upon your request we may provide an Education Specialist (called "ES") to perform certain services for you in connection with your purchase of eligible Machines. The ES is an IBM Business Partner who acts as an independent contractor in performing these services and provides such services at no additional charge to you. Provision of these services depends upon the availability of an ES in the geographic area in which you are located. We will provide the details of the services to you upon request.

5 Adjustment Charges

For a Product acquired under this Attachment, you agree to promptly notify us if any of the following occurs during a two-year period beginning on the Product's Date of Installation:

1. you use the Products for External Use;
2. the Machine is removed from your Institution;
3. the Program or Program Package is transferred to a party outside your Institution; or
4. any copy of a Program Package is distributed in a manner that does not comply with the terms of this Attachment

In such event, you may be required to pay an adjustment charge. That charge will be an amount equal to or less than, the discount or allowance we granted under this Attachment. We will inform you if you are required to pay an adjustment charge.

Regardless of any financial arrangement you may make with a third party, you are responsible to pay for any applicable adjustment charges.

6. Program Packages

You agree to reproduce and include, in addition to the copyright notice, the following label (called "EA Label") on all copies of Program Packages we authorize you to make:

Licensed Material - Property of IBM

IBM retains title to this copy and to any copy made from it. This copy may be distributed only to staff, students or employees of (insert the name of your Institution). You may not transfer possession of this copy to any other party.

You may distribute your copies of the Program Package to your faculty, staff, students, or employees, provided that:

1. the copies are used only for Internal Use, extended to include incidental use of such Programs for personal and non-commercial purposes;
2. you remain the licensee of each Program Package; and
3. you include a copy of the license agreement pertaining to the Program Package with each copy that you distribute.

ADDENDUM
TO THE
IBM CUSTOMER AGREEMENT DOCUMENTS
BETWEEN
IBM
AND
THE STATE OF WEST VIRGINIA

5/27/93 The IBM Customer Agreement, Z125-4575-00 1/91, dated hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 23:

Amend by inserting the following after paragraph three:

"This Agreement is considered a Master Agreement for use by State of West Virginia spending units ("Spending Units") utilizing the Purchasing Division ("Purchasing Division") of the Department of Administration.

References to this Agreement and any Attachments or Transaction Documents mean this Agreement and any Attachments or Transaction Documents as amended by this Addendum.

This Agreement, including any Attachments and Transaction Documents issued pursuant to this Agreement, may be modified only by a written document signed by an authorized representative of each party, and, if required, authorized by the Purchasing Division and approved as to form by the office of the Attorney General of the State of West Virginia ("Attorney General").

Spending Units not utilizing the Purchasing Division may use this Agreement if agreeable to IBM and the appropriate authority for such Spending Units. Each Spending Unit is responsible for determining which Products or Services it requires and paying its own bills, subject to certain Purchasing Division and Division of Information Services and Communications of the Department of Administration (ISC) restrictions.

Services or Products provided under this Agreement may be continued for the term specified in the relevant Attachment or Transaction Document, contingent upon funds being appropriated by the Legislature or otherwise being available on a spending unit by spending unit basis. In the event funds are not appropriated or otherwise available for continuation of the Services or Products for a particular Spending Unit, that Attachment or Transaction Document shall terminate without penalty on June 30 as to that Spending Unit. After that date, the Attachment or Transaction Document becomes of no effect and is null and void as to that Spending Unit. The Spending Unit agrees to use its best efforts to have the amounts contemplated under this Agreement that pertain to that Spending Unit included in its budget. Non-appropriation or non-funding shall not be considered an event of default."

Page 3 of 23:

1. Amend paragraph 1.1 by inserting after the paragraph entitled Customer-set-up Machine, "Date of Acceptance is the date upon which you have accepted a Product or Service, which shall be not less than ten (10) calendar days following your actual receipt of the Product or Service. Your actual receipt of a Product is the following:

1. for a Machine --
 - a. the business day on which we install it or, if you defer installation, make it available to you for installation; or
 - b. the day on which a Customer-set-up Machine is actually received by you.
2. for a Program, the latest of --
 - a. the day that its testing period ends;
 - b. the day on which the Program is actually received by you; or
 - c. the day specified in a signed Transaction Document on which we authorize you to make an Additional License Copy or a copy of a Distributed Feature.

In the event more than one Product and/or Service is included in a signed Transaction Document, your receipt of each Product or Service for such Transaction Document shall be the date on which the last Product or Service is actually received by you.

Prior to the expiration of ten (10) calendar days from your actual receipt of a Product or Service, you may reject the Product or Service if it does not conform to the terms of the signed Transaction Document and this Agreement. If we have not received your written rejection of a Product or Service within such period, you will be deemed to have accepted the Product or Service.

In the event more than one Product or Service is included in a signed Transaction Document and you rightfully reject all or any part of such Products or Services or we fail to deliver all or part of such Products or Services, you will not be responsible for payment for any accepted Products or Services included in such Transaction Document until (1) an amended Transaction Document to reflect the Products and/or Services accepted by you is executed by us and has received any required approvals, or (2) you have accepted Products and/or Services delivered in place of the rejected Products and/or Services. If we are unable to replace the rejected Products and/or Services within a reasonable period of time, such reasonable period of time to be determined by you, you agree to either return the previously accepted Products or Products received as a result of Services performed to us or make payment for the accepted Products or Services in accordance with the terms of this Agreement."

2. Amend paragraph entitled "Date of Installation" by inserting at the end thereof, "Notwithstanding the foregoing or anything to the contrary, you shall not be responsible for any payment related to a Product or Service, nor shall any responsibility for payment accrue, until such Product or Service has been received by you.

3. Amend paragraph entitled "Specifications" by inserting at the end thereof, "In the event we have expressly agreed in a signed Transaction Document that a Product to be delivered by us will conform to bid specifications issued by you, the term "Specifications" shall also include such bid specifications for that Product."

Page 4 of 23:

1. Amend paragraph 1.2 "Attachments" by deleting the last sentence and inserting in lieu thereof, "The Attachments must be signed by both parties and if, required, authorized by the Purchasing Division and approved as to form by the Attorney General."

2. Amend paragraph 1.2 "Transaction Documents" by inserting at the end thereof, "The Transaction Documents must be signed by both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney

General."

3. Amend paragraph 1.2 "Conflicting Terms" by deleting the language in its entirety and inserting in lieu thereof, "In the event of conflict among the terms of the various documents, the following order of precedence shall control: 1. a Transaction Document setting forth the agreed terms and conditions specific to a procurement; 2. this Addendum; 3. an Attachment; and then 4. this Agreement. Furthermore, all documents must have been signed by both parties, been issued in accordance with all Purchasing and ISC requirements, and, if required, approved as to form by the Attorney General before being considered effective."

4. Delete language in paragraph 1.2 "Our Acceptance of Your Order" in its entirety, and insert in lieu thereof, "A Product or Service becomes subject to this Agreement when a Transaction Document has been signed by both parties and, where required, authorized by the Purchasing Division and approved as to form by the Attorney General. We are not required to accept your order if we have not made you an offer."

5. Delete paragraph 1.2 "Your Acceptance of Additional Terms" in its entirety.

6. Amend paragraph 1.3 by inserting at the end thereof, "If we have agreed in a Transaction Document executed by both of us to deliver Products and/or Services on or before a specified date and fail to deliver those Products and/or Services on or before the specified date, we will pay to the Spending Unit liquidated damages, if such damages are certain in amount and were specified in the executed Transaction Document, unless the failure to deliver was caused by an event of force majeure. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions."

Page 5 of 23:

1. Amend paragraph 1.4 by deleting "Electronic Communications" in its entirety.

2. Amend paragraph 1.5 "Price Increases" by deleting the second sentence of the second paragraph in its entirety and inserting in lieu thereof, "However, no increase shall apply to Transaction Documents executed by both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General; and to orders in process which have a

specified period of acceptance and are signed by both of us and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General prior to the end of the period of acceptance. Further, charges specified in a Transaction Document shall remain in effect for the term of the Transaction Document."

Page 6 of 23:

1. Amend paragraph 1.6 by deleting the language in its entirety and inserting in lieu thereof, "We invoice: 1. recurring and monthly charges (other than usage charges) for a Program and for Maintenance Services in arrears for the applicable invoice period; 2. usage charges in arrears following the period in which you incur them; and 3. all other charges in arrears when or after you incur them. For a Product with a one-time charge, payment is due upon acceptance and is considered delinquent if not paid within the latter of sixty (60) days of (a) the Date of Acceptance or (b) the date of receipt if a legitimate, uncontested invoice. In the event the terms and conditions on our invoice conflict with the terms and conditions to which we have agreed in writing, signed by both parties and, if required, approved as to form by the Attorney General, the conflicting terms and conditions on the invoice shall be void and of no effect. You represent that you, as a state entity, are exempt from Federal, State and local taxation, and are not responsible for the payment of any taxes. We agree that you will not file any tax returns or reports on our behalf."

2. Amend paragraph 1.7 by deleting the last sentence and inserting in lieu thereof, "These additional charges will be specified to you in the appropriate bid documents or Transaction Documents. To be reimbursed travel expenses, we agree to abide by the "State of West Virginia Travel Regulations Governing Travel On and After 1 April 1993", unless otherwise directed by the Purchasing Division."

3. Amend paragraph 1.8, paragraph five, by inserting at the end, "In the event we provide an item that is not new, we certify that it is eligible for maintenance."

4. Amend paragraph 1.8, paragraph six, by inserting at the end of the first sentence, "such location to be in the continental United States.", and by inserting at the end of the paragraph, "We agree that during the warranty or maintenance service period of a Machine for which Carry-in Service is available, we will maintain a designated location to which you may ship the Machine. In the event we change a designated location during such period, we agree that the new designated location will be reasonably equivalent to the prior location."

Page 7 of 23:

1. Amend paragraph 1.9, paragraph two, by deleting the last sentence in its entirety and inserting in lieu thereof, "We will then reimburse you the amount you paid to IBM for the Product, unless the Date of Acceptance for the Product was more than two (2) years prior to the date of our written request to return it. If the Date of Acceptance for the Product was more than two (2) years prior to the date of our written request to return it, we will then reimburse you a pro rata portion of the amount you paid, based upon twenty percent (20%) depreciation per year (pro rated on a monthly basis) from the Date of Acceptance."

2. Amend paragraph 1.10, 2., by deleting the word "tangible."

Page 8 of 23:

1. Amend paragraph 1.10, 3., by deleting the language in its entirety, including the second paragraph of 3, and inserting in lieu thereof, "the amount of any other actual loss or damage; provided, that with respect to a claim the subject of which is a Program that is generally available from IBM to its customers and that is not modified by us for you, such amount shall be limited to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Program that is the subject of the claim."

2. Amend paragraph 1.10, "Items for Which We are Not Liable" by deleting "2. loss of, or damage to, your records or data;".

3. Amend paragraph 1.11, 6., by deleting "two years after the cause of action arose" and inserting in lieu thereof, "the period specified by West Virginia law".

4. Amend paragraph 1.12, 1., by inserting after the first sentence, "However, you may assign, delegate or resell directly to another State of West Virginia Spending Unit upon written notice to us."

5. Amend paragraph 1.12, 2., by inserting "c. you are reselling, leasing or transferring directly to another Spending Unit."

Page 9 of 23:

1. Amend paragraph 1.15, paragraph one, by deleting the last sentence and paragraph two in their entirety and inserting in lieu thereof, "By changing the terms of this Agreement, we

have effectively terminated this Agreement. The new terms apply, as of the effective date we specify in the notice, only to new orders (those we receive on or after the effective date of the notice). The terms and conditions for on-going Transaction Documents, such as licenses and Services, will remain in effect for the term of the transaction, as well as for any extensions or renewals. For a change to be valid, both of us must sign it, the Purchasing Division must authorize it and the Attorney General must approve it as to form. Additional or different terms in any order or written communication from one party are void."

2. Amend paragraph 1.16 by deleting the first paragraph and inserting in lieu thereof, "Either party may terminate this Agreement on thirty (30) days written notice to the other party."

3. Amend paragraph 1.18 by deleting the words "New York" and inserting in lieu thereof, "West Virginia".

4. Amend by inserting, "1.19 Severability Any provision of this Agreement found to be prohibited by law, invalid or unenforceable shall be ineffective to the extent of and for the duration of such prohibition, invalidity or unenforceability without invalidating the remainder the Agreement."

Page 11 of 23:

Amend paragraph 2.1 "Warranty for Integrated Systems", paragraph two by deleting the sentence, "It begins on the date we deliver the system to you" and inserting in lieu thereof, "It begins on the Date of Acceptance of the system"

Page 13 of 23:

Amend paragraph 3.5, paragraph 6, by inserting at the end thereof, ", unless you have assigned, transferred or sold the Specific Machine directly to another Spending Unit, in which case we agree to license the Code to that Spending Unit."

Page 14 of 23:

Amend paragraph 4.2, "Actions You May Not Take", 1., by deleting the language in its entirety and inserting in lieu thereof, "You agree not to do any of the following:

1. sublicense the license for any Program;
2. assign or transfer the license for any Program, except directly to another Spending Unit;

3. distribute any Program to any third Party; or
4. reverse assemble, reverse compile, or otherwise translate any Program."

Page 15 of 23:

Amend paragraph 4.5, paragraph one, by inserting at the end thereof, ", provided that a testing period will not be less than ten (10) working days after you receive the Program".

Page 16 of 23:

Amend paragraph 4.9, paragraph one, by inserting after the fourth sentence, "However, any changes in charges will be effective only on new Transaction Documents being amended, or on renewals or extensions of on-going Transaction Documents."

Page 17 of 23:

1. Amend paragraph 5.1, paragraph two, by deleting the words "inform you of" in the first sentence, and inserting in lieu thereof, "mutually agree upon in writing".

2. Amend paragraph 5.1, paragraph four, by inserting at the end thereof, "unless otherwise mutually agreed upon in writing".

3. Amend paragraph 5.1, "Alternative Service During Warranty", line five, by deleting the words "an additional charge" in the fourth sentence and inserting in lieu thereof, "the amount specified in our published rates or, in the event there is no published rate applicable to the alternative service, at the charge mutually agreed upon in writing".

Page 18 of 23:

1. Amend paragraph 5.2, paragraph two, line three, by deleting the words "orders that we confirm" and inserting in lieu thereof, "Transaction Documents signed by an authorized representative of both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General"

2. Amend paragraph 5.2, paragraph three, line three, by deleting the word "specify" and inserting in lieu thereof, "mutually agree upon in writing".

3. Amend paragraph 5.2, paragraph four, by deleting the language in its entirety.

4. Amend paragraph 5.2, "Continuing Support Services Termination", by deleting the language in its entirety and inserting in lieu thereof, "You may terminate a Continuing Support Service by providing us one month's written notice. In the event you terminate without cause, you agree to pay us for our reasonable costs to the date of termination."

Page 19 of 23:

Amend paragraph 5.3, "Changes to the Statement of Work" by deleting the second and third sentences and inserting in lieu thereof, "The Change Authorization becomes effective when executed by both parties and approved as to form by the Attorney General."

Page 20 of 23:

Amend paragraph entitled, "Project Support Services Termination", by deleting the language in its entirety and inserting in lieu thereof, "You may terminate a project on written notice to us. Such written notice of termination will specify the date of termination, which date will be the last date of any expenses incurred by you. We may terminate a project if you do not meet your obligations concerning it by sending you written notice of the termination and specifying the date of termination. Upon termination, we will stop our work in an orderly manner as soon as practical. You agree to pay us the reasonable cost for all Services we provide and any Materials we deliver through the project's termination and all costs that are reasonably necessary to stop our work in an orderly manner as soon as practical. We agree to use our best efforts to mitigate any expenses you may incur as a result of a termination. Payment includes any charges we reasonably incur in terminating subcontracts.

Page 21 of 23:

1. Amend paragraph 6.1, paragraph 1, by deleting the language in its entirety and inserting in lieu thereof, "We provide discounts for certain Products based on the volume of business you reasonably expect to do with us (called your "Estimate") during a contract period. In no way is the Estimate a guarantee or commitment on your part. The term "Estimate" replaces the term "Commitment" throughout this Section 6.1."

2. Amend paragraph 6.1, "How We Apply the Discounts", paragraph one, line four, by deleting ", subject to our price

change terms described below."

3. Amend paragraph 6.1 by deleting the paragraphs entitled "Price Changes" (on pages 21 and 22), "Adjustment Charges" (on page 22), and "International Discounts" (on page 22) in their entirety.

Page 22 of 23:

Amend paragraph 6.2, paragraph two, line five, by deleting ", if you request it in writing before the effective date of the change."

Page 23 of 23:

1. Amend paragraph 6.3, paragraph seven, line three, by deleting "unless you request us not to do so" and inserting in lieu thereof, "if agreed in writing by both parties".

2. Amend paragraph 6.3, paragraph eight, line five, by deleting the word "specify", and inserting in lieu thereof, "mutually agree upon in writing".

3. Amend paragraph 6.3, "Invoicing Options", paragraph two, by deleting the last sentence in its entirety.

4. Amend paragraph 6.3, "Invoicing Options", paragraph three, by deleting the last two sentences in their entirety.

The IBM Customer Agreement, Signature Page for Attachments, Z125-4571-00 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby accepted without amendment.

The IBM Customer Agreement, Attachment for Licensed Program Support, Z125-3920-04 4/92, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 2:

1. Amend paragraph one by deleting "or by using, or making any payment for, the offering described below".

2. Amend paragraph 1. General Terms, paragraph two, 2., lines two and three, by deleting "automatically on the day following the end of the preceding Period, unless you request otherwise" and inserting in lieu thereof, "on the day mutually agreed to by us".

Page 2 of 2:

1. Amend paragraph 1., 5., by deleting the language in its entirety.

2. Amend paragraph 1., 8., lines three and four, by deleting "(as specified in an Exhibit)" and inserting at the end thereof, ", such termination charges to be actual costs or losses sustained during the current fiscal year".

3. Amend paragraph 3., 3., by deleting "provide us with written notice if you wish to terminate Support upon your receipt of our renewal notification. At any other time, you may".

The IBM Customer Agreement, Attachment for State and Local Government, Z125-4205-02 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

The parties agree that those provisions of the Attachment for State and Local Government, Z125-4205-02 1/91, the parties have agreed upon have been incorporated into the Agreement by this Addendum and that such Attachment for State and Local Government shall not apply to transactions between the parties.

The IBM Customer Agreement, Attachment for Educational Allowance, Z125-3083-03 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 2:

Amend paragraph one, lines three and four, by deleting "or by using the Products as described below (or allowing others to do so), or by making any payment for the Products".

AGREED TO:

STATE OF WEST VIRGINIA

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By Chuck Polan

By Steven J. Casper

Chuck Polan
Name (type or print)

STEVEN J. CASPER
Name (type or print)

Dept. of Administration, Secretary
Title

BRANCH MANAGER
Title

May 28, 1993
Date

May 27, 1993
Date

APPROVED AS TO FORM this 29th
day of June, 1993

DARRELL V. MCGRAW, JR., ATTORNEY GENERAL

By: Dawn E. Wayfield
Deputy Attorney General

05/24/93
DS:WP-KS:IEH'CUST

Second Amendment to AGREEMENT

International Business Machines Corporation and the State of West Virginia entered into that certain MASTER IBM CUSTOMER AGREEMENT BETWEEN IBM AND THE STATE OF WEST VIRGINIA, dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("Agreement"), as amended by the ADDENDUM TO THE IBM CUSTOMER AGREEMENT BETWEEN IBM AND THE STATE OF WEST VIRGINIA, also dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("First Amendment"). This SECOND ADDENDUM AMENDMENT TO AGREEMENT ("Second Amendment") amends the Agreement, which the parties hereto do mutually agree to amend as follows:

Section 1.10 of the Agreement, as amended by the First Amendment, shall be deleted in its entirety and replaced with the following paragraph:

Our liability to you for any cause whatsoever shall be limited to the amount of any actual loss or damage, up to the greater of \$100,000 or the purchase price paid to us for the Products and Services that are the subject of your claim. The foregoing limitation does not apply to (a) Section 1.9 of this Agreement or (b) damages resulting from bodily injury (including death) and damage to real property and tangible personal property. In no event shall we be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by you hereunder, loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if we have been advised of the possibility of such damages. Both parties agree that this Agreement does not create any right or cause of action for any third party against the other except for third party claims that fit within Section 1.9 of this Agreement.

Except as amended herein, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

All capitalized terms used but not otherwise defined herein are defined in the Agreement.

The parties acknowledge that they have read this Second Amendment, understand it, and agree to be bound by its terms and conditions. Further, they agree that this Second Amendment and the Agreement are the complete and exclusive statement of the agreement between the parties, superseding all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

Agreed to:

State of West Virginia

By



Authorized Signature

Name (type or print):

Date:

Identification number:

Address:

Agreed to:

International Business Machines Corporation

By



Authorized Signature

Name (type or print): Mark Nicolay, IBM Client Unit Executive, Kentucky

Date: 5/9/08

Agreement number:

IBM address: 1500 Aristides Blvd

Coldstream Research Campus

Lexington, KY 40511-1319 USA

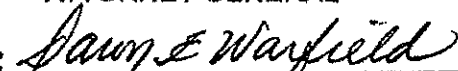
Building: CS | Floor: NA | Office: MO

APPROVED AS TO FORM THIS 22nd
DAY OF May, 2008

DARRELLY MCGRAW, JR.
ATTORNEY GENERAL

After signing, please return a copy of this Amendment to the "IBM address" shown above.

By:



DEPUTY ATTORNEY GENERAL

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 an 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, to assist you in your performance of your critical business and information processing activities in the event of an Outage Emergency.

1. Definitions

Configuration means 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.

Outage Emergency means 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 means 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.

Covered Address means 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.

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 initial 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

IBM provides time you request for you to exercise your recovery plan, procedures, and operation ('Recovery Exercise' "Exercise"). For each Recovery Exercise, IBM makes 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:

1. notify IBM that you are declaring an Outage Emergency by calling the toll-free number IBM provides;
2. 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;
3. 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;
4. supply all personnel and appropriately licensed software necessary for an Event unless otherwise specified in a Supplement;
5. 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;
6. furnish supplies, materials and storage media necessary for your Event;
7. 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

8. 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 do not 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:

1. any associated charges for telecommunications services you select;
2. charges for additional hours and Exercises you schedule beyond the annual Recovery Exercise Allowance specified in the Supplement;
3. 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
4. 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, telephone and facsimile.

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

For purpose of access priority and interruption of Recovery Exercise Time, "Services customer" and "Outage Emergency" under this Attachment include "Business Recovery Services (BRS)" customer and "Disaster", respectively, as defined in previous versions of this Attachment

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 agree to allow IBM and its subsidiaries to store and use your contact information, including names, phone numbers and e-mail addresses, anywhere IBM and its subsidiaries do business. Such information will be processed and used in connection with the business relationship between you and IBM, and may be provided to contractors, Business Partners, and assignees of IBM and its subsidiaries for uses consistent with their collective business activities, including communicating with you (for example, for processing orders, for promotions, and for market research)

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.

Both you and IBM agree that the complete agreement between you and IBM 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: _____

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: _____

Agreement Number: _____

Enterprise Number: _____

IBM Marketing Number: _____

Address:

Address:

Attn: BCRS Contract Operations

IBM Corporation

PO Box 700

Suffern, NY 10901-0700

Telephone: _____

e-mail: _____

e-mail: ibmbcrs@us.ibm.com

BUSINESS ASSOCIATE ADDENDUM

This Addendum ("Addendum") supplements and is made a part of the IBM Customer Agreement ("ICA") between the State of West Virginia ("Customer") and International Business Machines Corporation ("IBM"), dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("Agreement"); as amended by the ADDENDUM TO THE IBM CUSTOMER AGREEMENT BETWEEN IBM AND THE STATE OF WEST VIRGINIA, also dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("First Amendment"); and also amended by the SECOND ADDENDUM AMENDMENT TO AGREEMENT ("Second Amendment"), approved by the State of West Virginia and pending final execution as attached hereto. IBM and Customer may be referred to individually as a "Party" or collectively as the "Parties."

Recitals

- A. Customer and IBM are Parties to the Agreement pursuant to which IBM provides certain services to Customer. In connection with those services, Customer may disclose to IBM certain health information held by Customer ("Protected Health Information," as defined at 45 C.F.R. § 160.103) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and certain regulations promulgated thereunder by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 and 164 ("HIPAA Regulations").
- B. The purpose of this Addendum is to help facilitate Customer's compliance with the requirements of the HIPAA Privacy Rule and the HIPAA Security Rule (effective April 20, 2005) when (i) Customer is a "covered entity," and (ii) IBM is the recipient of Protected Health Information from Customer under the Agreement and is acting as a "business associate" of Customer, as those terms are defined in the HIPAA Regulations.
- C. The Customer acknowledges that IBM may act in a capacity other than as a business associate and that this Addendum only applies to the extent that IBM is acting as a business associate for Customer. Hereinafter though, IBM will be referred to as "Business Associate."

IN CONSIDERATION OF THE FOREGOING, and the mutual promises and covenants contain herein, the Parties agree as follows:

Agreement

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the HIPAA Regulations.

2. **Applicability.** This Addendum shall be applicable to Protected Health Information (i) received by Business Associate from Customer or (ii) created or received by Business Associate on behalf of Customer.

3. **Scope of Use of Protected Health Information.** Business Associate shall not use or disclose Protected Health Information for any purpose other than:

- (i) As permitted or required by the Agreement or to carry out the activities specified in the Agreement;
- (ii) For data aggregation or management and administrative activities of Business Associate; and
- (iii) As otherwise permitted or required by law.

4. **Safeguards for the Protection of Protected Health Information.** Business Associate shall process Protected Health Information and Electronic Protected Health Information on Customer's behalf and in accordance with Customer's instructions. Business Associate shall follow Customer's instructions by implementing and maintaining operational and technological safeguards relative to Protected Health Information and administrative, physical and technical safeguards with respect to Electronic Protected Health Information, mutually agreed to in applicable statements of work or in comparable contract documents describing the services to be performed. Customer agrees that the specified safeguards are appropriate for its requirements. Customer also confirms that Customer is solely responsible for ensuring that specified processing and safeguarding instructions comply with applicable data protection laws.

5. **Reporting of Unauthorized Uses or Disclosures.** Business Associate shall report to Customer any use or disclosure of Protected Health Information of which Business Associate becomes aware that is not provided for or permitted in the Agreement, including this Addendum. Promptly report to Customer any Security Incident of which it becomes aware.

6. **Use of Subcontractors.** To the extent that Business Associate discloses Protected Health Information and/or Electronic Protected Health Information to one or more subcontractors or agents, Business Associate shall cause each such subcontractor and agent to sign an agreement with Business Associate containing substantially the same provisions and conditions related to the protection and confidentiality of Protected Health Information and/or Electronic Protected Health Information as those that apply to Business Associate under the Agreement and this Addendum.

7. Authorized Access to and Amendment of Protected Health Information.

Business Associate shall make available all Protected Health Information held by Business Associate. Additionally, Business Associate shall incorporate any amendments Customer makes to Protected Health Information. The requirements of this section may be satisfied by Business Associate providing electronic access to Customer of Customer data maintained or processed by Business Associate.

8. Accounting of Disclosures of Protected Health Information.

Business Associate shall keep records of disclosures of Protected Health Information made by Business Associate (the "Disclosure Accounting") on an ongoing basis for a period of six (6) years, except for disclosures exempt from accounting in 45 C.F.R. § 164.528(a)(1). Business Associate shall provide the Disclosure Accounting to Customer within forty-five (45) days of receiving a written request therefor from Customer.

9. Health and Human Services.

Business Associate shall make its internal practices, books and records related to the use and disclosure of Protected Health Information under the Agreement and this Addendum available to Secretary of the Department of Health and Human Services for the purpose of determining Customer's compliance with 45 CFR § 164.500 et seq.

10. Future Confidentiality of Protected Health Information.

Upon the expiration or earlier termination of the Agreement for any reason, if feasible, Business Associate shall return to Customer, or, at Customer's direction, destroy, all Protected Health Information in any form. If such return or destruction is not feasible, Business Associate shall extend the protections of this Addendum to the Protected Health Information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information infeasible.

11. Termination of the Agreement.

Customer may terminate those portions of the Agreement which require Business Associate to use or disclose Protected Health Information in the event Business Associate breaches a material term of this Addendum. Such termination shall be in accordance with and subject to any rights to cure and payment obligations specified in the Agreement.

12. Effect on Agreement.

The sole purpose of this Addendum is to facilitate Customer's compliance with HIPAA Regulations. This Addendum is not intended to, nor shall it be construed to, reduce or diminish any of Business Associate's or Customer's obligations under the Agreement. Accordingly, except as to the extent expressly inconsistent with this Addendum, all other terms of the Agreement shall remain in full force and effect and shall not be modified, diminished or reduced hereby. There are no intended third party beneficiaries under this Addendum.

13. **Assignment.** Neither Party may assign this Addendum, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither Party will unreasonably withhold such consent. The assignment of this Addendum, in whole or in part, to any majority-owned subsidiary in the United States or to a successor organization by merger or acquisition does not require the consent of the other. It is not considered an assignment for Business Associate to divest a portion of its business in a manner that similarly affects all of its customers.

IN WITNESS HEREOF, the Parties hereto have caused this Business Associate Addendum to be executed as of the date and year hereinafter written.

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: _____

Name: _____

Title: _____

Date: _____



Trademark and Contract Terms

© International Business Machines Corporation 2008

All Rights Reserved

IBM Corporation

If not otherwise expressly governed by the terms of a written confidentiality agreement executed by the parties, the information presented herein is IBM Confidential information and shall only be disclosed to those employees who have a need to know of its contents, shall not be disclosed to third parties or outside State of West Virginia and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this RFQ response for the contemplated business arrangement with IBM without the express written consent of International Business Machines Corporation (IBM)

We propose that should IBM be selected as the successful bidder, the general terms and conditions for the resulting contract shall be governed by the terms and conditions of the Master Customer Agreement No JM 71665 ("ICA") and Addendum to ICA Documents ("First Amendment") each dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993, and the Second Addendum Amendment to ICA ("Second Amendment") dated May 9, 2008 and approved by the State of West Virginia Attorney General on May 22, 2008, as attached hereto. IBM considers the ICA, First Amendment and Second Amendment to represent the majority of specific exceptions to the terms and conditions contained in the RFQ

In addition, the terms and conditions that will govern the specific services proposed will be:

- 1) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services (Z125-8306-06) ("the Attachment") (copy enclosed); and
- 2) various Transaction Documents which will specify the details associated with a Subscription(s) (including Configuration details, pricing, contract period, etc), and any standard IBM amendments to the Attachment that are applicable to the particular options you decide to select for the Subscription(s)

Upon your notification of your intent to award the Disaster Recovery Services for the Mainframe and Network Backbone Support project to IBM, IBM anticipates that a mutually agreed upon Attachment for Multivendor Information Technology Recovery Services will be negotiated prior to commencing any work and will represent IBM's sole and exclusive response to this RFQ. Some customers do have unique contractual requirements and we are always willing to negotiate modifications to the terms and conditions on a case-by-case basis to be made at the transaction level. However, minor modifications involve simple wording changes which are straight-forward and do not affect the price of a transaction; material modifications that substantially change the terms and conditions would affect the price. Accordingly, if the State of West Virginia awards us the business, we are willing to negotiate modifications to the proposed terms and conditions, with the understanding that material modifications may affect the price.

This RFQ response is valid for a period of 90 days following submission.

IBM, the IBM logo, AIX, AS/400, DB2, DFSMS/MVS, Enterprise Storage Server, ESCON, FICON, FlashCopy, eServer, iSeries, Netfinity, OS/390, pSeries, RS/6000, S/390, SANergy, Tivoli, TotalStorage, VM/ESA, xSeries, z/OS, z/VM and zSeries are trademarks of the IBM Corporation in the United States or other countries or both. Intel, Intel logo, Intel Inside logo, Intel Centrino, Intel Centrino logo, Celeron, Intel Xeon, Intel SpeedStep, Itanium and Pentium are trademarks of Intel Corporation in the United States, other countries, or both. Microsoft, Windows, Windows NT and the Windows logo are trademarks of Microsoft Corporation in the United States, other countries, or both. Java and all Java-based trademarks are trademarks of Sun Microsystems, Inc. in the United States, other countries, or both. UNIX is a registered trademark of The Open Group in the United States and other countries.

Other company, product or service names may be trademarks or service marks of others.



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
 ISCJ0031

PAGE
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF
 KRISTA FERRELL
 304-558-2596

RFQ COPY

TYPE NAME/ADDRESS HERE

RODZMS

S U P P L I E R

DEPARTMENT OF ADMINISTRATION
 IS&C - DATA CENTER MANAGER
 BUILDING 6, ROOM B110
 1900 KANAWHA BOULEVARD, EAST
 CHARLESTON, WV
 25305-0135 304-558-5914

DATE PRINTED	TERMS OF SALE	SHIP VIA	FOB	FREIGHT TERMS
09/10/2008				

BID OPENING DATE: 09/11/2008 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
				ADDENDUM NO. 1		
				THIS ADDENDUM IS ISSUED TO ANSWER ALL TECHNICAL QUESTIONS SUBMITTED PRIOR TO THE DEADLINE FOR TECHNICAL QUESTIONS.		
				BID OPENING DATE REMAINS: 09/11/2008		
				BID OPENING TIME REMAINS: 1:30 PM		
				***** END ADDENDUM NO. 1 *****		
0001	1	LS		920-20		
				DISASTER RECOVERY SERVICES AGREEMENT		

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>[Signature]</i>	TELEPHONE	DATE 9-11-08
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

Addendum No. 1
RFQ#: ISCJ0031

Technical Questions and Answers

Q. What are the print volumes in a month?

A. In a non-disaster situation the State prints approximately 2.5-3.0 million pages per month. In a disaster situation, the actual numbers would vary considerably. The time of the year, the time of the month, etc. would dictate the print volumes.

Q. What are you doing with the documents after they've been printed?

A. The State will make the decision at the actual time of the disaster.

Q. Do you want us to handle the mailing?

A. No, this is not a part of this RFQ.

Addition to Specifications:

Please delete the Resident Vendor Preference (RVP) Language in the Bid Documents and Replace with the Attached Language.

Rev. 11/07

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with West Virginia Code, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**
 _____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or** 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 _____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,
2. **Application is made for 2.5% resident vendor preference for the reason checked:**
 _____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
3. **Application is made for 2.5% resident vendor preference for the reason checked:**
 _____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
4. **Application is made for 5% resident vendor preference for the reason checked:**
 _____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,
5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 _____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,
6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**
 _____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: IBM Signed: Krist Miller
 Date: 9-11-08 Title: ITSM

*Check any combination of preference consideration(s) in either "A" or "B", or both "A" and "B" which you are entitled to receive. You may request up to the maximum of 5% preference for both "A" and "B".