

## General Terms and Conditions Business Continuity Recovery Services

*These General Terms and Conditions are in addition or in replacement of those of the Current IBM Customer Agreement available in French or Dutch under the internet: (please keep a copy of it with these terms) <http://www.ibm.com/support/operations/be/fr/docs/ica.pdf> <http://www.ibm.com/support/operations/be/nl/docs/ica.pdf> or any contract in place between the parties . In the event of any conflict between the clauses of these different contracts, the clauses of the present General Terms and Conditions shall prevail.*

*These General Terms and Conditions, the Current IBM Customer Agreement and any applicable schedules, represent the complete agreement ("the Agreement") regarding this subject matter and replace any prior oral or written communications between the parties concerning this subject matter*

### 1. Scope of Services

IBM will provide Business Continuity and Recovery Services to assist the Customer in preparing for and responding to a Disaster at his Specified Location. Business Continuity and Recovery Services are comprised of a base set of services, which apply for all his Subscriptions, and optional services which the Customer can select. The Business Continuity and Recovery Services (called "Services") and Order details (including charges) that apply for each Subscription are set out in the Order for that Subscription.

### 2. Definitions

BASE CONFIGURATION is the set of Machines and Services that IBM makes available. The Base Configuration will be either identical to, or have equivalent or greater capacity and functionality than, the configuration specification in the Proposal.

DISASTER is any unplanned event, due to causes beyond Customer's control, which renders the critical information processing function at a Specified Location inoperable or unusable.

RECOVERY CENTER is an IBM designated facility, either fixed or mobile, where IBM provides the Services.

SPECIFIED LOCATION is Customer's information processing facility within a single building. IBM considers server-attached I/O machines located outside the building to be part of Customer's Specified Location.

SUBSCRIPTION is Customer's Services Order for a Base Configuration. A Specified Location may have one or multiple Subscriptions.

The details of each Subscription are identified in the Order.

### 3. Service Descriptions

#### Base Service - Test Time

IBM provides Test Time to allow the Customer to 1) test his Disaster recovery plan and procedures and 2) verify the operation of his critical applications on the Base Configuration. Scheduling of Test Time in number of days and the calendar will be as defined in the Order.

#### IBM Responsibilities:

IBM will:

- provide the Customer use of the Base Configuration at the Recovery Center for the amount of Test Time identified in the Order. If the Order specifies a mobile Recovery Center, IBM will deliver the mobile facility to the location the Customer requests;

- provide the Customer additional Test Time, if he requests, on an "as available" basis for an additional charge identified in the Order; and
- on Customer's request, provide the Customer with trained IBM personnel, to assist him in setting up or modifying the telecommunication network.

Customer Responsibilities:

The Customer agrees:

- to confirm to IBM the planned Test Period by written notice one (1) month before the test sessions;
- that if he needs to change his Test Time schedule, he will comply with a minimum one week notification;
- to provide a list of qualified persons who will perform the tests, at least two (2) working days before the test session;
- that IBM may reschedule Customer's Test Time to serve another Customer who has declared a Disaster. If the Customer is testing at the time, he agrees to immediately cease testing and remove his data and programs from the Base Configuration and vacate the Recovery Center within four (4) hours;
- not to use Test Time for productive use purposes;
- if the Order specifies a mobile Recovery Center, the Customer also agrees to:
  - provide access and appropriate space for positioning the mobile Recovery Center and ensure he has all necessary permission, including that from government authorities, to allow the positioning and use of the mobile facility,
  - provide suitable power supply and electrical earthing point,
  - provide and connect all infrastructure (connection points), telephone connections and IT for data transmission as well as the by the Customer required network services, and
  - be responsible for security of and all damage to the mobile Recovery Center while it is at Customer's Designated Location.

**Base Service - Recovery Services**

When the Customer declares a Disaster, IBM will take immediate actions to prepare the Recovery Center for Customer's use.

IBM Responsibilities:

IBM will :

- provide access 7 days a week, 24 hours a day;
- have the Recovery Center and Configuration available for Customer's use as soon as possible but no longer than 4 hours after the Customer declares a Disaster. The Recovery Center is identified in the Order. If that Recovery Center is unavailable, IBM will provide, at the earliest opportunity, the Services at another Recovery Center. If the Order specifies a mobile Recovery Center, IBM will deliver the mobile facility to the location the Customer requests as identified in the Order;
- provide the Customer priority access to a Recovery Center over Services Customers who have scheduled Test Time, and Services customers who subsequently declare a Disaster;
- provide:

- basic office working space for Systems Operators as identified in the Proposal,
- operational and technical assistance which may, at IBM's option, include providing programs WITHOUT WARRANTIES OF ANY KIND.

Customer Responsibilities:

The Customer agrees to:

- designate qualified persons who have authority to declare a Disaster by calling IBM at the emergency telephone number IBM provides after contract signature;
- confirm the telephone call notifying IBM of a Disaster by written notice the first working day after the Disaster;
- pay the usage charge specified in the Order for each day the Recovery Center is available for his Disaster recovery use. The Customer may not credit unused Test Time against the daily usage charge; and
- if the Order specifies a mobile Recovery Center, the Customer also agrees to:
  - provide access and appropriate space for positioning the mobile Recovery Center and ensure the Customer has all necessary permission, including that from government authorities, to allow the positioning and use of the mobile facility,
  - provide suitable power supply and electrical earthing point,
  - provide and connect all infrastructure (connection points), telephone connections and IT for data transmission as well as the by the Customer required network services, and
  - be responsible for security of and all damage to the mobile Recovery Center while it is at Customer's Designated Location.

#### **4. IBM Other Rights and Responsibilities**

IBM has been informed which people have been authorised by the Customer to report a Disaster.

IBM agrees to implement reasonable security procedures to protect the Customer's physical assets while they are in IBM's fixed site Recovery Center. Such protection includes providing security at the Recovery Center that restricts access only to those persons authorized by the Customer or IBM. This security will be in place 24 hours a day, 7 days a week.

Within the framework of these security rules, to ensure the security of the Customer and of IBM, IBM preserves the right to control the identity of the person that reported a Disaster by phone.

#### **5. Customer Other Responsibilities**

The Customer agrees to:

- provide all resources, programs, and manage all the related operations and data necessary for testing and Disaster recovery;
- arrange and pay for travel of Customer's personnel and transfer of Customer's data and programs;
- for programs the Customer supplies, ensure he is authorized by the licensor(s) to use them on the Machines provided by IBM;
- use any programs IBM may provide to the Customer only in support of Customer's Disaster recovery efforts at the Recovery Center;

- furnish supplies, materials, and storage media which are not included in the Services;
- be solely responsible for the results obtained from the Services (including the Machines and programs IBM provides) as well as all machines and programs provided by the Customer;
- be solely responsible for the security of data during transmission and for correcting transmission errors and data corruption problems and apply all rules related to data privacy;
- to allow IBM to store Customer's contact information, such as names, phone numbers, and e-mail addresses, in any country where IBM does business and to use such information internally and to communicate with the Customer for the purposes of IBM's and Customer's business relationship;
- follow the specifications and procedures IBM provides for the Services;
- remove Customer's data and programs from the Machines as part of Customer's allowable time for testing and Disaster recovery;
- take all reasonable precautions to protect programs and Machines from infection by computer virus while under Customer's control; and
- accept these Services for Customer's own use and not for "remarketing" except if prior written acceptance by IBM.

## 6. Contract Period

The Contract Period that applies for a Subscription will be set out in the Order.

## 7. Renewal

For each Subscription, the Services in effect on the Contract Period End Date will be renewed for the period of time (called "Renewal Contract Period") identified in the Contract unless the Customer or IBM provide the other with three months written notification of their intent not to renew. If the Renewal Contract Period is not specified, it will be for ONE year.

## 8. Termination and Withdrawal

The Customer or IBM may terminate the Contract if the other does not comply with any of their terms, provided the one who is not complying is given written notice and reasonable time to comply.

If IBM withdraws Services for which the Customer has prepaid, IBM will provide a refund to the Customer prorated to the effective date of withdrawal.

The Customer may terminate the Order or the Contract, by giving IBM 3 months' written notice. The effective date of termination will be the same day of the month as in the Contract Period End Date or, if that date is not specified, then it will be the last day of the notice period. Such termination will result in adjustment charges equal to the charges due for the remainder of the Contract Period.

## 9. Base Configuration Changes

The Customer may request a change to the Base Configuration on one (1) month's written notice. IBM will agree to any changes that can be reasonably accommodated and IBM will confirm the changes in a revised Order or Proposal or a new Order and Proposal with applicable adjustments in charges.

## 10. Charges and Invoicing

The charges that apply for a Subscription are identified in its associated Order.

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In case of a Disaster situation, if a Systems Engineer performs Services, additional charges will apply.

In case of a Testsession, if a Systems Engineer performs Services outside working hours, additional charges will apply.

Usage charges are invoiced following the period in which the Customer incurs them. All other charges that are not specified in the Subscription and which are at the expense of the Customer will be charged whenever they occur.

## 11. Price Modification and Price Adjustments

In Belgium the Agoria Index will be used to adjust the price. The adjustments will be calculated according to the following formulas:

$$Pn1 = P0 \times [0,2 + 0,8 \times (S1 / S0)]$$

$$Pn2 = P0 \times [0,2 + 0,8 \times (S2 / S0)]$$

Where

Pn1 = the adapted price applicable for services delivered as from January 1 of year n

Pn2 = the adapted price applicable for services delivered as from July 1 of year n

P0 = the price indicated in the payment scheme or the Order, as applicable

S1 = the greater of S0 or the Agoria Index for December of year (n-1)

S2 = the greater of S1 or the Agoria Index for June of year n

S0 = for a payment scheme or Order issued during the first half of the year, the Agoria Index for December preceding this issue date, or, for a payment scheme or an Order issued during the second half of the year, the Agoria Index for June preceding this issue date.

In Luxembourg the STATEC Index will be used. The charges as defined in this Order will be adjusted twice a year, on January 1 and July 1, in function of the STATEC Index. However, no adjustment will be done within the first six months after the issue date of the Order.

The adjustments will be calculated according to following formulas :

$$Pn1 = P0 \times [0,2 + 0,8 \times (S1 / S0)]$$

$$Pn2 = P0 \times [0,2 + 0,8 \times (S2 / S0)]$$

Where

Pn1 = the adapted price applicable for services delivered as from January 1 of year n

Pn2 = the adapted price applicable for services delivered as from July 1 of year n

P0 = the price indicated in this Order

S1 = the greater of S0 or the STATEC Index for December of year (n-1)

S2 = the greater of S1 or the STATEC Index for June of year n

S0 = for a Proposal issued during the first half of the year, the STATEC Index for December preceding this issue date, or, for a Proposal issued during the second half of the year, the STATEC Index for June preceding this issue date.

The STATEC Index used for the above calculations is the one of the cost of wages, monthly published by the "Service Central de la Statistique et des Etudes Economiques" (STATEC).

In the event STATEC stops publishing this Index or substantially changes its content or format, the parties will substitute another comparable index published at least annually by a mutually agreeable source.

## 12. Additional Terms

### Limitation of Liability

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If, after exercising commercially reasonable efforts, IBM is unable to provide the Customer a Service in accordance with its description in these General Terms and Conditions and the Customer elects not to accept the Service as IBM can provide it, IBM will pay the Customer an amount equal to the total monthly charges the Customer paid for the Service for the 12 last months of a Contract Period.

This is the Customer's exclusive remedy for this type of failure.

For all other circumstances for which the Customer is entitled to recover damages from IBM, the extent of IBM's liability is specified in the section of the IBM Contractual Booklet entitled "Limitation of Liability."

#### **Insurance**

If equipment from one party is placed in the other party's location, both parties agree to take an insurance for the full value of the equipment each for itself as owner/holder or which has been entrusted to itself as a third party.

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