

AGREEMENT NO. \_\_\_\_\_

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
IBM CORPORATION

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and IBM CORPORATION, 1 New Orchard Road, Armonk, NY 10504-1722 ("Consultant").

WHEREAS, City requires disaster recovery services from a qualified vendor to allow the City to continue to operate the Port of Los Angeles; and

WHEREAS, by reason of the nature of the services required by this Agreement, it is not economical or feasible for the City to have work performed by its own employees; and

WHEREAS, City requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the City in performing disaster recovery at a remote location; and

WHEREAS, Consultant possesses extensive experience in dealing with disaster recovery and providing disaster recovery facilities, computer equipment, storage equipment and network equipment; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A, B and C.

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or

other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

## II. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article X (Termination) hereof.

C. Reserved.

## III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until the sixth Council meeting day after Board action or the City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

#### IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit F), shall be Two Hundred Eighty Seven Thousand Six Hundred and Forty Dollars (\$287,640).

C. Change Approval. The Executive Director, or his designee, is authorized to execute and approve changes to this Agreement as necessary to provide for continuing and additional disaster recovery services required over the term of this Agreement, provided that no change to this Agreement which increases the annual contract expenditure (set for above is subsection B of this Section V) more than One Hundred Fifty Thousand Dollars (\$150,000) shall become effective unless authorized by the Board.

D. Consultant shall submit an invoice to City monthly following the effective date of this Agreement for services performed during the preceding month.

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received.

\_\_\_\_\_  
(Consultant's Signature)

E. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his designee prior to payment. All invoices due and payable within 45 days after receipt of an invoice.

In the event of time and materials services, Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

F. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

VI. RECORDKEEPING AND AUDIT RIGHTS

For any Time and Material Statement of Work, the City or any of its duly authorized representatives, upon reasonable written notice, shall receive access, for the purposes of audit and investigation, to any and all books, documents, papers, and records of Consultant which pertain to the Agreement. Said books, documents, papers and records must be retained by the Consultant for three (3) years following final payment under the Agreement.

VII. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit G.

IX. INDEMNIFICATION AND INSURANCE

A. Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest by defending the City from all Third Party claims based on the following: (A) bodily injuries to or death of any person, including Consultant or its employees/officers/agents; and (B) damage to any real property or tangible personal property; for which Consultant is legally liable to that third party and pay all costs, damages and attorney's fees that a court finally awards or that are included in a settlement approved by Consultant, provided that City shall promptly notify Consultant in writing of the claim, allow Consultant to control the defense, and will cooperate with Consultant in the defense and any related settlement negotiations.

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA™** at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Consultant's behalf.

a. Worker's Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City. However waiver of subrogation does not apply in instances of sole negligence or willful misconduct on the part of the City.

b. Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

c. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given prior written notice, in accordance with the policy provisions, by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

d. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

e. Renewal of Policies

Prior to the expiration of each policy, Consultant shall direct their insurance broker or agent to submit to the City's online insurance compliance system Track4LA™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director will provide Consultant with a written notice to cure such lapse in coverage within ten (10) business days.

C. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

- i. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
- ii. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
- iii. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
- iv. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
- v. Consultant provides the name and address of its claims administrator.
- vi. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
- vii. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
- viii. Consultant has complied with all laws pertaining to self-insurance.

D. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

X. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement. Upon notice of termination by the City, City agrees to pay Consultant for any and all services provided up to the effective date of the termination plus any applicable termination charges detailed in the Statement of Work.

Notwithstanding the foregoing, should either party terminate or cancel all or any part of this Agreement for a material breach of its terms, the party who is not complying shall be provided written notice and a reasonable time to comply.

XI. PERSONAL SERVICE AGREEMENT

Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Assignment of Consultant's rights to receive payments and by Consultant in conjunction with the sale of the portion of Consultant's business that includes the product or service is not restricted. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

XII. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit H.

XIII. RESERVED

XIV. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

XVI. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVII. COPYRIGHTS, AND PATENTS

If a third party asserts a claim against City that an Consultant's Service acquired under this Agreement infringes a patent or copyright, Consultant will defend City against that claim and pay amounts finally awarded by a court against City or included in a

settlement approved by Consultant, provided that City promptly (i) notifies Consultant in writing of the claim, (ii) supplies information requested by Consultant, and (iii) allows Consultant to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

Consultant has no responsibility for claims based, in whole or part, on Non-Consultant Products, items not provided by Consultant, or any violation of law or third party rights caused by City's content, materials, designs, specifications, or use of a non-correct version or release of a Consultant Project when an infringement claim could have been avoided by using a current version or release.

#### XVIII. RESERVED

#### XIX. CONFIDENTIALITY

Any disclosure of confidential data or information will be in accordance with the terms of Exhibit E, Agreement for the Exchange of Confidential Information ("Agreement").

#### XX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Information Technology, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

#### XXI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that its authorized TIN is 13-0871985. No payments will be made under this Agreement without a valid TIN.

#### XXII. SERVICE CONTRACTOR WORKER RETENTION POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Violation of this provision, where applicable, shall entitle

the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

XXIV. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit I.

XXV. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant

and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

#### XXVI. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

#### XXVII. IBM CUSTOMER AGREEMENT – ORDER OF PRECEDENCE

The Documents listed below are incorporated into and made part of this agreement. In interpreting this Agreement and resolving any conflicts, the Agreement would take precedence and then the Exhibits in order listed below. To the extent that terms do not conflict, the terms of Exhibit D are considered in addition to or additives to those that are not addressed in the Agreement.

- Exhibit A – Supplement for Multivendor Information Technology Recovery Services
- Exhibit B – Amendment to IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services
- Exhibit C – Attachment for Multivendor Information Technology Recover Services
- Exhibit D – IBM Customer Agreement
- Exhibit E – Agreement for the Exchange of Confidential Information

## XXVIII. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

## XXIX. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

## XXX. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

## XXXI. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXXII. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXXIII. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXIV. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the Order of Precedence set forth in Paragraph XXVII shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XXXV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
Secretary

IBM CORPORATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Print/type name and title)

Attest \_\_\_\_\_

\_\_\_\_\_  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_, 2015  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By: \_\_\_\_\_  
JUSTIN HOUTERMAN, Deputy

JH/jrs  
06/03/15  
Attachments

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
		<b>Budget FY:</b>	<b>Amount:</b>
		2014/15	\$95,880
		2015/16	\$95,880
		2016/17	\$95,880
		<b>TOTAL:</b>	<b>\$287,640</b>
<b>For Acct/Budget Div. Use Only:</b>			
Verified by:	_____		
Verified Funds Available:	_____		
Date Approved:	_____		



**IBM RESILIENCY SERVICES**

**EXHIBIT A  
MULTIVENDOR INFORMATION TECHNOLOGY RECOVERY SERVICES  
CONTRACT DOCUMENTS**

**FOR**

**CITY OF LOS ANGELES**

**425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309**

**SUBMITTED BY:**

**Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
PO Box 700  
Suffern, NY 10901-0700**

Supplement Number: CFTD4RR  
Package ID: 20150526162745  
Date Generated: 05/26/2015  
This offer is good until: 08/01/2015

**Supplement for Multivendor Information Technology Recovery Services**

The terms of the IBM Customer Agreement and its Attachment for Multivendor Information Technology Recovery Services (or an equivalent agreement signed by both parties) apply to this transaction.

**Customer Name and Address**

CITY OF LOS ANGELES  
425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

**REFERENCE NUMBERS**

Attachment: B000874  
Agreement: HWD0011  
Customer: 5302035  
Enterprise: 5302000

**CONTRACT PERIOD**

Start Date: 08/01/2015  
End Date: 07/31/2018

**IBM Address for Notices:**

Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
PO Box 700  
Suffern, NY 10901-0700

**SUPPLEMENT**

Number: CFTD4RR  
Effective Date: 08/01/2015  
Revision (yes/no): No  
Renewal (yes/no): No

**Covered Address:**

425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

**Primary Recovery Site**

Boulder, CO

**Monthly Charges**

Total Monthly Charge: \$6,900  
Minimum Total Monthly Charge: \$6,900

**Recovery Charges**

Initial Recovery Charge: \$6,900  
Day(s) Included in Initial Recovery Charge: 2  
Daily Recovery Charge per day thereafter: \$3,100

**Recovery Exercise**

Initial Contract Period Year 1 – Total Hours: 144  
Number of Exercises: 2  
Each subsequent twelve-month period – Total Hours: 144  
Number of Exercises: 2  
Additional Recovery Exercise Time, per 4-hour block: \$1,047  
Additional Recovery Exercise, per Exercise: \$2,094

**Telecommunications**

One-Time Charge: \$0  
Usage charges are billed separately.

**General**

Work area space allocated at time of Event.

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

IBM agrees to provide the Services described in this Supplement provided you accept this Supplement, without modification, by signing in the space below on or before 08/01/2015.

Agreed to:  
**CITY OF LOS ANGELES**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Title:  
Name (type or print):

Title:  
Name (type or print):

Date:  
Customer identification number: 5302035

Date:  
Attachment number: B000874

**Supplement for Multivendor Information Technology Recovery Services (Continued)**

Customer Name: CITY OF LOS ANGELES

Processor type/model: CLIENTSRV CPU

Customer Number: 5302035

Total Memory(CPU Memory) N/A

Address: 425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

Total Disk ( for DASD ) 76,000.00

Primary Recovery Site: Boulder, CO

Contract Number: CFTD4RR.0.1.1

**Equipment Configuration**

Quantity Or Units	Type	Model	Product Description
ClientSrv			
1	CLIENTSRV	CPU	Client Server CPU
2	HPDL580E	BASE	HP Server DL580E -2.67Ghz HC
	Item:	HP ProLiant DL580 G5	
	Includes:	4 Way SMP Architecture,1 Intel 2.67Ghz Xeon Proc-Hex Core 4GB Memory,1 146 GB SAS Hard Drive DVD-ROM Drive,Dual onboard 10/100/1000 Ethernet Adapter 1 HP P400i SAS Array Controller,USB support	
30	HPDL580E	MEM1	Add'l HPDL580E 4GB Memory
2	HPDL580E	PRC1	Add'l HPDL580E 2.67Ghz Prc HC
12	IBMX3850C	BASE	IBM Server x3850C 2.26Gh 8C
	Item:	IBM x3850 Server - 8 Core	
	Includes:	PCI-Express Architecture (5 Slots) 1 Intel 2.26Ghz Xeon 8 Core Processor 4 GB Memory,1 300 GB SAS Hard Drive DVD Drive,1 Dual Integrated 10/100/1000MB Ethernet Adapter 1 IBM SAS Array Controller,USB support	
96	IBMX3850C	MEM1	Add'l IBMx3850C 4 GB Memory
3	IBMX3850D	BASE	IBM Server x3850D 2.4Gh 10C
	Item:	IBM x3850 Server - 10 Core	
	Includes:	PCI-Express Architecture (5 Slots) 1 Intel 2.4Ghz 10 Core Processor 4 GB Memory,1 300 GB SAS Hard Drive DVD Drive,1 Dual Integrated 10/100/1000MB Ethernet Adapter 1 IBM SAS Array Controller,USB support	
765	IBMX3850D	MEM1	Add'l IBMx3850D 4 GB Memory
9	IBMX3850D	PRC1	Add'l IBMx3850D-2.4Ghz Proc
10	PCOPT FC	146G	CPQ/HP Server 146G Hard Drive
15	PCOPT FC	300X	IBM Server 300GB Hard Drive
17	PCOPT FC	ETH6	Intel 10GB PCIE Eth Adapter
	Dual-port 10G Ethernet adapter		
17	PCOPT FC	FC15	Emulex LP12002 PCI-Xpress FC
	Emulex LP12002 - Dual Port PCI-Express fiber adapter		
17	PCOPT FC	FC18	Emulex LP12002 PCI-Xpress FC
	Emulex LP12002 - Dual Port PCI-Express fiber adapter		
17	PRELOAD	SR1	OS Preload For Intel Server
	Operating Systems (OS) supported for Preload:		
	Win Server 2003 Standard & Enterprise Edition 32/64 R2		
	Win Server 2008 Standard & Enterprise 32/64 Bit (Full Installation)		
	Win Server 2008 Standard & Enterprise 64 Bit (Full Installation) R2		
	Win Server 2012 Standard and Enterprise 64 Bit (Full Installation)R2		
	VMWare ESX 2.5.x, 3.0.x, 3.5.x; vSphere 4.x; ESXi 4.x, 5.x		
	Refer to associated amendment for Preload Services		
Disk			
304	SANDISK1	FC	250 GBs FC SAN Disk

Includes: 250 GBs of RAID protected Tier 1 disk capacity with Fibre Channel connectivity.  
BCRS technicians will manage and configure the connectivity and logical configurations.

#### Tape library

- 1 3584D BASE IBM 3584 Tape Library  
Includes 3584-L32 with 30 cartridge I/O station, 175 cartridge capacity, and Ethernet support.
- 4 3584D-FC LT05 IBM Generation 5 LTO Tape Drv  
Includes 1 fibre channel attached IBM LTO Gen 5 tape drive.  
Prerequisite: 3584D BASE configuration.

#### Network

- 1 CEXT/LA GIGE GigE Circuit Extension to COE  
Includes: Extension of Dedicated GIGE COPPER for City of Los Angeles to customer owned equipment (COE)  
Note: Client will provide, or provide for:  
- Circuit termination equipment: (Router, Mux Etc.)  
- Dedicated Circuit to IBM demarc
- 1 INT/CUST IP Customer Provided IP Address  
Includes: - Customer provided IP addresses routed to the IBM provided recovery facility  
- Coordination with a mutually agreed upon Internet Service Provider (ISP) for re-direction of Internet traffic to the IBM recovery facility.  
- ISP and bandwidth must be selected separately using the INT/MM <ISP> entry.

#### Notes:

- 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.

- 25 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 INT/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 IRN/5M/FE COS Intersite RecoveryNet  
Includes: - Network connectivity between two Business Continuity and Resiliency Services Centers.  
- 100BaseT Ethernet support at Bandwidth: 5Mb per contracted quantity of 1

- Notes: - This solution uses shared resources available to customers at all Business Continuity and Resiliency Services locations.  
- Total bandwidth allocated can not exceed 45Mb over multiple contracted entries.

- 1 LAN/CONN5 FE VLAN Connection Service  
Includes: - (5) VLANs (Virtual Local Area Networks), per quantity selected, between two Business Continuity and Recovery Services sites.  
- VLANs will be configured on a 100BaseT Ethernet port

Note: This provides access only, bandwidth must be selected separately.

1 LINE/LA DIAL Boulder Dedicated Dial Line

Note: Dedicated Analog Dial Line for City of Los Angeles

1 CAT6509 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 CHECKPTIP 1220 Checkpt IP12200 Secty Appl

Includes: Checkpoint IP12200 Base System With:

- 4 GB RAM
- (8) 10/100/1000BaseT Ethernet ports
- (1) IDE based hard drive
- (2) USB ports
- Check Point Operation System

Note: Configuration Console (PC, RS6000, SUN etc.), terminal emulator (e.g. HyperTerm) and web browser (e.g. Internet Explorer) MUST be contracted separately or provided by the customer.

Customer must provide any additional software. (e.g. Checkpoint).

1 COEPOWER .5KW COE Space .5KW Power

Includes: .5KW Power Per Qty 1 for Customer Owned Equipment.

1 COETEMP CGE Copper 1GigE Port for COE

Includes: One port for customer owned equipment, available for recovery exercise or outage emergency only.



**Addendum for  
Customer Owned Equipment (continued)**

**Customer Owned Equipment**

Qty	Type	Model	Description
1	CISCO	ASR1002	CISCO ROUTER
1	USR	V92	US ROBOTICS MODEM

## Amendment to the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services

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Applicable Supplement Number(s): All in U.S.

CITY OF LOS ANGELES ("you") and International Business Machines Corporation ("IBM") agree that the following terms and conditions amend the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services, specifically for the above Supplement Number(s) as follows:

1. At the end of Section 5 "Charges", insert the following one new subsection:

### Guaranteed Monthly Charges

Notwithstanding the foregoing, during the period of 08/01/2015 through 07/31/2018, your Total Monthly Charges will be fixed and firm unless you request changes (additions and/or deletions) to a Configuration, in which case IBM will adjust your Total Monthly Charge, subject to the Minimum Total Monthly Charge of the Subscription for which the change is being requested. Any such adjustment will be based on IBM's then current prices for the adjusted item.

Guaranteed Monthly Charges does not apply to Usage Charges (Initial Recovery Charge, Daily Recovery Charge, Additional Exercise Time Charge, and Cold-Site Daily Charge), Telecommunications Charges (One-Time Charge, Recurring Charge, and Usage Charge), or Temporary Transfer of Configuration Charges (Temporary Transfer of Configuration for Exercise and Temporary Transfer of Configuration for Recovery).

Under Guaranteed Monthly Charges, unless you make changes, IBM may increase the Total Monthly Charge only at Subscription renewal. If IBM intends to exercise this right, IBM will provide you written notice at least three months before the End Date of the current Contract Period.

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If there is a conflict between the terms and conditions of this Amendment and those of 1) the IBM Customer Agreement, 2) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services, or its 3) Supplement(s) and any Addendum(a) and Statement(s) of Work, those of this Amendment prevail. Except as modified by this Amendment the terms and conditions of such Amendment, Attachment, and Supplement(s) and Addendum(a) and Statement(s) of Work for Multivendor Information Technology Recovery Services remain in full force and effect.

Each party acknowledges that it has read this Amendment and any attached Addenda, Supplements, and Statements of Work, understands them, and agrees to be bound by their terms and conditions. Further, both parties agree that the complete agreement between the parties about Multivendor Information Technology Recovery Services will consist of 1) this Amendment including any Addendum(a), Supplement(s), and Statement(s) of Work, and 2) the IBM Customer Agreement, 3) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services and 4) its Supplement for Multivendor Information Technology Recovery Services, and other Supplement(s), Addendum(a) and Statement(s) of Work, if any. This statement of the agreement supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to the subject.

Agreed to:  
CITY OF LOS ANGELES

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Title:  
Name (type or print):

Title:  
Name (type or print):

Date:

Date:

Customer identification number: 5302035

Attachment number: B000874

Customer address:  
425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

IBM address:  
Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
P.O. Box 700  
Suffern, NY 10901-0700

**MULTIVENDOR INFORMATION TECHNOLOGY RECOVERY SERVICES  
CONTRACT DOCUMENTS**

**FOR**

**CITY OF LOS ANGELES**

**425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309**

**SUBMITTED BY:**

**Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
PO Box 700  
Suffern, NY 10901-0700**

Supplement Number: CFTD4SR  
Package ID: 20150526163345  
Date Generated: 05/26/2015  
This offer is good until: 08/01/2015

**Supplement for Multivendor Information Technology Recovery Services**

The terms of the IBM Customer Agreement and its Attachment for Multivendor Information Technology Recovery Services (or an equivalent agreement signed by both parties) apply to this transaction.

**Customer Name and Address**

CITY OF LOS ANGELES  
425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

3

**REFERENCE NUMBERS**

Attachment: B000874  
Agreement: HWD0011  
Customer: 5302035  
Enterprise: 5302000

**CONTRACT PERIOD**

Start Date: 08/01/2015  
End Date: 07/31/2018

**SUPPLEMENT**

Number: CFTD4SR  
Effective Date: 08/01/2015  
Revision (yes/no): No  
Renewal (yes/no): No

**Primary Recovery Site**

Los Angeles, CA

**IBM Address for Notices:**

Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
PO Box 700  
Suffern, NY 10901-0700

**Covered Address:**

425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

**Monthly Charges**

Total Monthly Charge: \$1,090  
Minimum Total Monthly Charge: \$1,090

**Recovery Charges**

Initial Recovery Charge: \$1,100  
Day(s) Included in Initial Recovery Charge: 2  
Daily Recovery Charge per day thereafter: \$600

**Recovery Exercise**

Initial Contract Period Year 1 – Total Hours: 144  
Number of Exercises: 2  
Each subsequent twelve-month period – Total Hours: 144  
Number of Exercises: 2  
Additional Recovery Exercise Time, per 4-hour block: \$600  
Additional Recovery Exercise, per Exercise: \$1,200

**Telecommunications**

One-Time Charge: \$0  
Usage charges are billed separately.

**General**

Work area space allocated at time of Event.

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

IBM agrees to provide the Services described in this Supplement provided you accept this Supplement, without modification, by signing in the space below on or before 08/01/2015.

Agreed to:  
**CITY OF LOS ANGELES**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Title:  
Name (type or print):

Title:  
Name (type or print):

Date:

Date:

Customer identification number: 5302035

Attachment number: B000874

**Supplement for Multivendor Information Technology Recovery Services (Continued)**

Customer Name: CITY OF LOS ANGELES

Processor type/model: WKAC LA

Customer Number: 5302035

Total Memory(CPU Memory) N/A

Address: 425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

Total Disk ( for DASD ) N/A

Primary Recovery Site Los Angeles, CA

Contract Number: CFTD4SR.0.1.1

**5. Equipment Configuration**

6.

Quantity Or Units	Type	Model	Product Description
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WKAC/LA[1]

1	WKAC	LA	Workarea Recovery
1	HP9050DN	PRT1	HP9050 Series L'Jet 128MB Eth

HP9050 Series LaserJet Printer  
Ethernet connectivity included  
128MB Memory, 50PPM

1	INT/MM	WAR	MultiMegabit Internet Acc Pkg
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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.  
- Customer Configured Cisco Firewall (PIX or ASA as available)  
- 1 total registered IP addresses from a shared address pool.

Notes:

- Each selection of Qty 1 is equivalent to 1Mb Internet Access
- Client is responsible for configuring Firewall
- One Public IP address provided regardless of qty total.
- Client responsible for NAT/PAT
- 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

1	LAN/CONN5	FE	VLAN Connection Service
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Includes: - (5) VLANs (Virtual Local Area Networks), per quantity selected, between two Business Continuity and Recovery Services sites.  
- VLANs will be configured on a 100BaseT Ethernet port

Note: This provides access only, bandwidth must be selected separately.

1	PCWS-3160	RMT1	P4-3.16Gh Desktop Remote Ship
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Item: IBM PC Desktop - Remote ship  
Includes: Intel Core 2 Duo 3.16Ghz Processor  
2GB Memory, 100Mhz Buss  
250 GB SATA Hard Drive, DVD-ROM DRIVE  
21" Color Monitor, Keyboard and Mouse  
10/100 Ethernet Adapter  
USB Support

Note: This equipment can ONLY be used to support the Workplace Recovery Services image offering for a non-disaster event.

\* PLEASE SELECT THE PCOPT FC VID0 ENTRY IF DUAL-MONITORS

\* ARE BEING USED

1 FAX VFS Virtual Fax Service

Includes:

- (5) five fax server ports
- Multiple DID numbers can be assigned
- Each DID number has access to all 5 ports
- Web Interface to send and receive; Print Client for send
- Delivery of fax tiff files to up to 5 fax mailboxes
- up to 5 e-mail addresses for outgoing fax documents
- access to a common area fax machine

1 INT/MM IBMV Bandwidth for VOICE SVC

Network for voice applications

Includes:

- Bandwidth and one ethernet port at the IBM provided recovery facility.

Notes:

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

25 PCWS-3160 PKGA P4-3.16Ghz Desktop W/Wkspce

Includes workspace equipped with a PC and voice services

PC :

- PCI Architecture
- Intel Core 2 Duo 3.16Ghz Processor
- 2GB Memory, 100Mhz Bus
- 250GB SATA Hard Drive
- 1 DVD-ROM
- Color Monitor W/21" viewable screen size
- Keyboard and Mouse
- 10/100 Ethernet Adapter
- USB Support

Includes the preloading of a supported customer hard drive image.

Voice services for Call Centers and individuals

Includes:

- Voicemail
- Interactive information and employee status service
- Automatic Call Distribution
  - \* The answering and queuing of incoming calls
  - \* The creation and use of preprogrammed and stored call flow scripts that make use of Automatic Call Distribution, skills based routing, Interactive Voice Response functions, and DID redirection to deliver calls to agents and non agents.
  - \* Agent recording for up to 288 simultaneous agents.
  - \* Interactive supervisor capabilities
  - \* Real time data and historical reporting
  - \* There is a \$265 per hour charge to create scripts and to modify existing scripts.

1 VOICECONF CON Audio Conference Bridge

Each QTY of one includes one host and 24 participant passcodes. Call recording capability with Audio CD output and MP3 or WAV file.

Specialist assistance for technical or call quality issues  
Single number telephone access in over 70 countries  
enhanced call monitoring of calls in progress and attendee list

The remainder of this page is left intentionally blank.

## Exhibit B - Amendment to the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services

Applicable Supplement Number(s): All in U.S.

CITY OF LOS ANGELES ("you") and International Business Machines Corporation ("IBM") agree that the following terms and conditions amend the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services, specifically for the above Supplement Number(s) as follows:

1. At the end of Section 5 "Charges", insert the following one new subsection:

### Guaranteed Monthly Charges

Notwithstanding the foregoing, during the period of 08/01/2015 through 07/31/2018, your Total Monthly Charges will be fixed and firm unless you request changes (additions and/or deletions) to a Configuration, in which case IBM will adjust your Total Monthly Charge, subject to the Minimum Total Monthly Charge of the Subscription for which the change is being requested. Any such adjustment will be based on IBM's then current prices for the adjusted item.

Guaranteed Monthly Charges does not apply to Usage Charges (Initial Recovery Charge, Daily Recovery Charge, Additional Exercise Time Charge, and Cold-Site Daily Charge), Telecommunications Charges (One-Time Charge, Recurring Charge, and Usage Charge), or Temporary Transfer of Configuration Charges (Temporary Transfer of Configuration for Exercise and Temporary Transfer of Configuration for Recovery).

Under Guaranteed Monthly Charges, unless you make changes, IBM may increase the Total Monthly Charge only at Subscription renewal. If IBM intends to exercise this right, IBM will provide you written notice at least three months before the End Date of the current Contract Period.

2. At the end of Section 7 "Other Terms", insert the following one new subsection:

### Automatic Call Distribution (ACD) Services

Automatic Call Distribution (called "ACD") is a telephony feature for a call center environment that provides the capability to route calls to individual agents or agent groups. To use ACD Services, both ACD Agent Positions and ACD Routes are required.

### Definitions for ACD Services:

**Automatic Call Distribution Agent Position** ("ACD Position") means a workplace desk equipped with an ACD enabled voice instrument to receive incoming calls routed by an ACD system.

**Automatic Call Distribution Agents** ("ACD Agents") are the individual agents or agent groups in a call center environment to whom calls are routed by an ACD system.

**Automatic Call Distribution Routes** ("ACD Routes") are entries in electronically stored tables that determine how incoming calls are routed to ACD Agents.

### IBM Responsibilities - ACD Services

The following describes IBM's responsibilities relating to ACD Routes. For the Subscription(s) identified as subscribing to ACD Services, IBM will:

- a. build, and update upon your request, ACD Route(s) within one month of IBM's receipt of information you provide to IBM, and on which IBM may rely, to build or update such Routes;
- b. electronically store your ACD Route(s) on a server at an IBM provided location;
- c. provide to you the appropriate destination information to which you will redirect your calls or have your calls redirected during an Event;
- d. activate your ACD Route(s) in conjunction with an Event; and

- e. on your request and on a per-request basis, make updates to such ACD Route(s) based upon information you provide to IBM when making such request.

The following describes IBM's responsibilities relating to ACD Positions. For the Subscription(s) identified as subscribing to ACD Services, and for each ACD Position, IBM will provide an ACD enabled voice instrument which may be either a physical telephone device or agent software to be installed on a workstation and a telephone interface device. When utilized, the telephone interface device may be an internal PC card, or an external device that connects to an external (serial, parallel, USB, etc.) port.

When ACD Services are provided through the use of a telephone interface device and agent software installed on a workstation, and if such workstation is not provided by IBM (that is, it is provided through a Subscription to Class A, Class N, or Class R Services, or it is provided by you) or is physically located in a mobile unit, ACD Services on each such workstation will be available only after the workstation is installed and completely configured for ACD.

Additionally, IBM will provide one (1) specially equipped workstation (called a "Supervisor Workstation") to display your real time call center activities and measurements. On your reasonable request, IBM will provide printed reports of your call center activities from such Supervisor Workstation.

In addition to ACD Routes and ACD Positions, optional additional services exist that you may select on a per Subscription basis for an additional charge. Such optional additional ACD Services are i) ACD Agent Recording, ii) ACD Agent Recording Playback, and iii) Additional Supervisor Workstations.

For each Subscription having a Configuration that includes ACD Agent Recording, IBM will:

- a. depending upon the Recovery Site at which ACD Services are provided, record either all calls received and made by an ACD Agent, or only those calls made when logged in as an ACD Agent; and
- b. provide you a copy of all recordings on a transportable media (e.g., DAT, CD-ROM, etc.).

For each Subscription having a Configuration that includes ACD Agent Recording Playback, IBM will install and configure an application on a workstation(s) at the Recovery Site that will allow you to search the recording system and playback specific recordings made during an Event. Upon your request after an Event, IBM will make its recording playback system available to you, should you need to search your copy of the recordings and playback specific recordings.

For each Subscription having a Configuration that includes additional Supervisor Workstations, for each additional Supervisor Workstation in such Configuration, IBM will install and configure an application on a workstation at the Recovery Site that will allow you to view a subset of your call center activities and measurements from each such additional Supervisor Workstation.

#### Your Responsibilities - ACD Services:

You understand and agree that:

- a. ACD Services will not be available for an Event until the necessary hardware and software components have been installed and configured, and the ACD Routes have been created and installed; and
- b. when used, agent software must be installed on a workstation capable of supporting the Windows 98 (or later) operating system.

Your other responsibilities are as follows.

For ACD Routes, you agree to:

- a. provide to IBM, within one month of adding ACD Services to a Subscription, accurate ACD agent routing information on which IBM may rely to generate your ACD Route(s);
- b. arrange with your telecommunication providers, in advance of any Event, to establish alternate routing instructions to redirect your calls to the IBM-provided location;
- c. be responsible for the development and maintenance of the information required for IBM to generate ACD Route(s) for you;
- d. notify IBM promptly of any changes you make that may impact either the ACD Route(s) IBM generates and stores on your behalf or IBM's ability to provide ACD Services; and
- e. pay a one-time charge associated with the initial creation of your ACD Route(s). Such charge is specified in the Configuration section of a Supplement for Multivendor Information Technology Recovery Services. Additionally, there is a charge associated with IBM making changes to such

route(s). Upon your request for IBM to make a change to the ACD Route(s), such charge will be estimated and provided to you. IBM will not make such change without your written authorization.

When the ACD Services IBM provides you utilize an ACD enabled voice instrument that consists of agent software installed on a workstation and a telephone interface device, you agree:

- a. for each ACD Position, to provide a workstation that meets the following minimum requirements:
  - (1) 350 MHz Pentium PC;
  - (2) 32 MB RAM;
  - (3) 8 MB available hard-disk space;
  - (4) Windows 98 or better; and
  - (5) Sound card recommended;
- b. each such workstation may be a) included in the Configuration of your Subscription, b) provided through a Subscription to Class A, Class N, or Class R Services, or c) provided by you;
- c. that the telephone interface device may be an internal PC card, or an external device that connects to an external (serial, parallel, USB, etc.) port;
- d. that for you to install and use ACD Services, your workstation must a) be running a supported Windows operating system, b) be attached to a local area network (LAN), c) be configured with an Internet protocol (IP) address, and d) be able to communicate using the TCP/IP network protocol;
- e. that the ACD application must be configured to communicate with an IBM ACD server(s). This configuration will require that you work with IBM to design and document a TCP/IP network configuration that includes IBM network and server components; and
- f. that if, on such workstation, you reload the operating system or delete the ACD application or break the LAN or TCP/IP communications, then the ACD Services at such workstation will be unavailable until the full ACD configuration is restored.

When ACD Services are being provided in a mobile unit, you agree:

- a. that if you are providing the telephone services to such mobile unit(s), the telephone lines must be analog and capable of direct inward dialing ("DID") and direct outward dialing ("DOD") calling. You are responsible for providing any enhanced features (for example, 3-way calling, call transfer, etc.) you require;
- b. that if IBM is providing the telephone services to such mobile unit(s), the terms in IBM's Telephone In The Workplace Services apply;
- c. that if you are providing the data connectivity to such mobile unit(s), you must provide TCP/IP connectivity from your network to the IBM ACD server site(s) designated by IBM. This will require you to work with IBM to design and document a TCP/IP network configuration that includes IBM network and server components. You must have a Subscription for Multivendor Information Technology Recovery Services, where the Primary Recovery Site is the same as the IBM ACD server site, that includes these components in its Configuration; and
- d. that if IBM is providing the data connectivity to such mobile unit(s), you will be required to work with IBM to design and document a TCP/IP network configuration that includes IBM network and server components. You must have a Subscription for Multivendor Information Technology Recovery Services, where the Primary Recovery Site is the same as the IBM ACD server site, that includes these components in its Configuration.

Charges for ACD Services:

You agree to pay:

- a. the Monthly Charge for ACD Services. Such charge is included in the Total Monthly Charge specified in the Supplement for Multivendor Information Technology Recovery Services;
- b. the one-time charge associated with the initial creation of your ACD Route(s). Such charge is specified in the Supplement for Multivendor Information Technology Recovery Services. IBM will invoice such charge separately following completion of the requested update; and
- c. an additional charge each time you request IBM to make changes to your ACD Route(s) that are electronically stored on our servers. The amount of such charge will be based on IBM's prevailing rates and minimums. Upon your request for IBM to update such route(s), such additional charge will

be estimated and provided to you. IBM will invoice such charge separately following completion of the requested update. IBM will not make such change without your written authorization.

3. At the end of Section 7 "Other Terms", add the following new subsection:

Telephone In The Workplace Services

The basic telephone services provided for each end user workspace at a Recovery Site at no additional charge are:

- a. one (1) touch-tone Telephone Set;
- b. Direct Inward Dialing (DID) - Every telephone has a 10 digit telephone number that outside callers can dial directly rather than by going through a central attendant; and
- c. Direct Outward Dialing (DOD) - You can place outside calls without using a system attendant or waiting for an available line.

Additional telephone services and features ("Additional Telephone Services and Features") are available on a per Subscription basis for an additional charge.

IBM Responsibilities - Telephone In The Workplace Services:

Any Additional Telephone Services and Features to which you subscribe will be specified in a Supplement. Many of these Additional Telephone Services and Features require installation by a telecommunications services provider.

For each Subscription having a Configuration that includes Additional Telephone Services and Features, IBM will, upon receipt of the required information from you, initiate work orders with IBM's telephone service providers to implement the installation or programming of the Additional Telephone Services and features. The implementation schedule for these Additional Telephone Services and Features will be identified once such work orders have been placed.

Your Responsibilities - Telephone In The Workplace Services:

You understand and agree that:

- a. any Additional Telephone Services and Features to which you subscribe will not be available for an Event until the hardware and software components have been installed, and the telephone configurations have been created, installed and programmed;
- b. implementation times for such Additional Telephone Services and Features vary; and
- c. any Additional Telephone Services and Features will be available only at the Primary Recovery Site identified in the Supplement of each such Subscription.

Additionally, you agree to:

- a. provide IBM, within one (1) month of adding Additional Telephone Services and Features to a Subscription, with the required information necessary for IBM to create and submit telephone work orders to implement such Additional Telephone Services and Features;
- b. notify IBM promptly of any changes you make that may impact such Additional Telephone Services and Features;
- c. arrange, in advance of any Recovery Exercise or as soon as feasible following your declaration of an Outage Emergency, with your telecommunications providers to establish alternate call routing arrangements to redirect your incoming telephone calls to the telephone numbers at IBM;
- d. notify your telecommunications providers to redirect your calls to the IBM provided telephone number(s) for any Event;
- e. be solely responsible for any telecommunications provider's charges associated with the redirection of your incoming telephone calls to IBM; and
- f. accept responsibility for any failure or performance problems by your vendors, contractors, or telephone service providers associated with IBM's provision of Additional Telephone Services and Features which were beyond IBM's reasonable control to prevent.

Charges - Telephone In The Workplace Services:

You agree to pay:

- a. the Monthly Charges for any Additional Telephone Services and Features that you order. Such charges are included in the Total Monthly Charge specified in the Supplement for Multivendor Information Technology Recovery Services;
- b. an additional charge each time you require changes to Configurations or programming of any such Additional Telephone Services and Features. The amount of such additional charge will be based on IBM's prevailing rates and minimums. Upon your request for IBM to make these changes, such additional charge will be estimated and provided to you. IBM will invoice such charge separately following completion of the requested update. IBM will not make any changes without your written authorization; and
- c. all telephone usage charges resulting from your use of IBM provided telephone services. IBM will invoice such charges separately following completion of an Event.

4 At the end of Section 7 "Other Terms", insert the following one new subsection:

**Preload Services – image preload**

Under Preload Services – image preload (called "Image Preload Services"), in conjunction with an Event, IBM will load an image of your hard drive onto PC workstations at a Recovery Site.

**IBM Responsibilities - Image Preload Services**

Image Preload Services will be limited to the activities described in this Subsection, and will be provided on the quantity of workstation(s) identified in a Supplement as being subscribed to Image Preloads.

As necessary throughout the Contract Period, IBM will:

- a. provide to you technical specifications relating to the software you use for creating images;
- b. within 20 business days of IBM's receipt of an image from you, load such image onto a PC workstation at a Recovery Site;
- c. promptly notify you if the image(s) contain errors or did not load successfully;
- d. store a copy, in CD-ROM ("CD") format, of your most current workstation image(s) at the Recovery Site; and
- e. notify you of any PC workstation upgrade or refresh performed at the Primary Recovery Site, so you can make any required modifications to your image(s) to allow you to make better use of a Recovery Site during an Event.

During an Event, IBM will:

- a. load, using the most current CD(s) containing your workstation image(s) and instructions provided by you, your workstation image(s) onto PC workstations at the Recovery Site; and
- b. turn control of such workstations over to you.

**Your Responsibilities - Image Preload Services**

You agree to:

- a. within 20 business days of subscribing to Image Preload Services, provide IBM with:
  - (1) a copy of each image (in CD format) you want IBM to load onto PC workstation(s) at a Recovery Site; and
  - (2) information, on which IBM may rely, relating to IBM's performance of Image Preload Services;
- b. as necessary throughout the Contract Period:
  - (1) provide IBM with requested changes to the image two (2) weeks prior to a scheduled Event or as soon as feasible following your declaration of an Outage Emergency;
  - (2) upon receipt from IBM of notification of upgrades and/or refreshes to the PC workstations at a Recovery Site, provide updated images to IBM that reflect such upgrades and/or refreshes; and
  - (3) maintain the software you use for creating images in accordance with the technical specifications IBM provides to you;
- c. during an Event, assume control of the PC workstations at the Recovery Site after IBM completes loading the specified image(s) onto them.

Charges for Image Preload Services:

You agree to pay the Monthly Charge for Image Preload Services. Such charge is included in the Total Monthly Charge specified in the Supplement for Multivendor Information Technology Recovery Services.

Other Terms - Image Preload Services:

IBM will not be able to provide Image Preload Services during an Event until IBM has received from you a copy (in CD format) of the image(s) you want IBM to load onto PC workstation(s) at a Recovery Site.

- 5 At the end of Section 7 "Other Terms", insert the following one new subsection:

Remote Ship PC Services

Under the Remote Ship PC Service, IBM will provide you a desktop PC to allow you to create an image of your hard drive. To facilitate the loading of your hard drive images during an Event, this Remote Ship PC Service may be used in conjunction with a Subscription to image preload services.

IBM Responsibilities - Remote Ship PC

Remote Ship PC Services will be limited to the activities described in this Subsection, and will be provided on the quantity of "Desktop Remote Ship PCs" specified in a Supplement.

As necessary throughout the Contract Period, IBM will:

- a. within one (1) month of receiving your written request, transfer to you up to two (2) desktop computers, each consisting of a PC, monitor, mouse, and keyboard (collectively referred to as a "Desktop PC") that are identical to the desktop workstations specified in the Configuration for your use at the Primary Recovery Site;
- b. bear the risk of loss of Desktop PCs at your location, unless the loss is due to theft or vandalism by someone other than an IBM employee; and
- c. promptly notify you of any upgrades or refreshes IBM performs on the Desktop PCs at the Primary Recovery Site.

Your Responsibilities - Remote Ship PC

As necessary throughout the Contract Period, you agree to submit, at least one month prior to the date on which you need the Desktop PC delivered to your location, a written request to IBM regarding your use of such Desktop PC.

When IBM transfers Desktop PCs to you, you agree to:

- a. use the Desktop PCs for image creation purposes only;
- b. return the Desktop PCs to the IBM-designated location promptly upon completion of your image creation activities, but in no later than fifteen (15) days from the time such Desktop PCs are delivered to you, whichever comes first. An additional charge will apply if the Desktop PCs IBM transfers to you are not returned at the end of such 15 days;
- c. furnish all labor for unpacking and packing the Desktop PCs at your location;
- d. obtain IBM's written consent prior to moving the Desktop PCs to a location other than the location to which it was delivered;
- e. provide written notice to IBM before you make an alteration to any part of the Desktop PCs. You may make an attachment without notifying IBM. (An attachment is the connection of any other product or device to the Desktop PC. An alteration is any change made which deviates from the physical, mechanical, electrical, or electronic design, whether or not additional devices or parts are used. You may not make an alteration or attachment that creates a safety hazard or renders maintenance of the Desktop PC impractical. You are responsible for the results obtained from both alterations and attachments made by you);
- f. remove attachments and restore Desktop PCs to an unaltered condition, before returning them to IBM; and
- g. return the Desktop PCs to IBM in the same condition as when they were delivered to you, normal wear and tear excepted.

Charges - Remote Ship PC

You agree to pay:

- a. the Monthly Charge for Remote Ship PC Services. Such charge is included in the Total Monthly Charge specified in the Supplement for Multivendor Information Technology Recovery Services;
- b. all shipping charges, taxes, tariffs and insurance charges incurred for shipment of the Desktop PCs to your location and return to IBM; and
- c. an additional charge ("Late Return Charge") for each day or part thereof, if any, that you keep any such Desktop PCs beyond 15 days. The amount of such charge will be equal to fifty dollars (\$50) times the number of days that you keep any such Desktop PCs beyond the fifteenth day following delivery to you.

If there is a conflict between the terms and conditions of this Amendment and those of 1) the IBM Customer Agreement, 2) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services, or its 3) Supplement(s) and any Addendum(a) and Statement(s) of Work, those of this Amendment prevail. Except as modified by this Amendment the terms and conditions of such Amendment, Attachment, and Supplement(s) and Addendum(a) and Statement(s) of Work for Multivendor Information Technology Recovery Services remain in full force and effect.

**Each party acknowledges that it has read this Amendment and any attached Addenda, Supplements, and Statements of Work, understands them, and agrees to be bound by their terms and conditions. Further, both parties agree that the complete agreement between the parties about Multivendor Information Technology Recovery Services will consist of 1) this Amendment including any Addendum(a), Supplement(s), and Statement(s) of Work, and 2) the IBM Customer Agreement, 3) the IBM Customer Agreement Attachment for Multivendor Information Technology Recovery Services and 4) its Supplement for Multivendor Information Technology Recovery Services, and other Supplement(s), Addendum(a) and Statement(s) of Work, if any. This statement of the agreement supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to the subject.**

Agreed to:  
CITY OF LOS ANGELES

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Title:  
Name (type or print):

Title:  
Name (type or print):

Date:  
Customer identification number: 5302035

Date:  
Attachment number: B000874

Customer address:  
425 S PALOS VERDES  
SAN PEDRO, CA 90731-3309

IBM address:  
Attn: IBM Resiliency Services - Contract Operations  
IBM Corporation  
P.O. Box 700  
Suffern, NY 10901-0700

## 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,

6. 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:

By:

*[Handwritten Signature]*  
Authorized Signature

Name:

Bruce Saton

Title:

Executive Director

Date:

9-15-05

Customer Number:

Enterprise Number:

Address:

Telephone:

e-mail:

Agreed to:

International Business Machines Corporation

By:

*[Handwritten Signature]*  
Authorized Signature

Name:

Jamie Chamberlin

Title:

Client Executive

Date:

11/29/05

Agreement Number:

IBM Marketing Number:

Address:

Attn: BCRS Contract Operations

IBM Corporation

PO Box 700

Suffern, NY 10901-0700

e-mail: lbmbors@us.ibm.com

# IBM Customer Agreement

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This IBM Customer Agreement (called the "Agreement") governs transactions by which you purchase Machines, license ICA Programs, obtain Program licenses, and acquire Services from International Business Machines Corporation ("IBM").

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, both of us agree to the terms of this Agreement without modification. 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 ordered under this Agreement are subject to it.

Agreed to: (Enterprise name)

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print)

Name (type or print)

Date

Date:

Enterprise number:

Agreement number:

Enterprise address:

IBM address:

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

Exhibit D



Customer Agreement

This IBM Customer Agreement (called the "Agreement") governs transactions by which you purchase Machines, license ICA Programs, obtain Program licenses, and acquire Services from International Business Machines Corporation ("IBM")

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, both of us agree to the terms of this Agreement without modification. 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 ordered under this Agreement are subject to it.

APPROVED AS TO FORM AND LEGALITY  
ROCKWELL DELGADO, CITY ATTORNEY

JUN 06 2005

BY *Marcia Hajer Kamine*  
MARCIA HAJER KAMINE  
Assistant City Attorney

Agreed to: City of Los Angeles

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By *Sally J. Schenckel*  
Authorized signature

Name (type or print):

Name (type or print): Sally J. Schenckel

Date:

Date: 6/9/05

Enterprise number 5302000

Agreement number HWB0011

Enterprise address:

IBM address:

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

# IBM Customer Agreement

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# IBM Customer Agreement

## Part 1 - General

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### 1.1 Definitions

**Customer-set-up Machine** is an IBM Machine that you install according to IBM's instructions.

**Date of Installation** is the following:

1. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if you defer installation, makes it available to you for subsequent installation by IBM;
2. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. for a Program -
  - a. basic license, the later of the following:
    - 1) the day after its testing period ends; or
    - 2) the second business day after the Program's standard transit allowance period,
  - b. copy, the date (specified in a Transaction Document) on which IBM authorizes you to make a copy of the Program, and
  - c. chargeable component, the date you distribute a copy of the chargeable component in support of your authorized use of the Program.

**Designated Machine** is either 1) the machine on which you will use an ICA Program for processing and which IBM requires you to identify to it by type/model and serial number, or 2) any machine on which you use the ICA Program if IBM does not require you to provide this identification.

**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.

**ICA Program** is an IBM Program licensed under Part 4 of this Agreement.

**Licensed Internal Code** (called "LIC") is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

**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 IBM may provide to you.

**Machine Code** is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

**Materials** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to you as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

**Non-IBM Program** is a Program licensed under a separate third party license agreement.

**Other IBM Program** is an IBM Program licensed under a separate IBM license agreement, e.g., IBM International Program License Agreement.

**Product** is a Machine or a Program.

**Program** is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program that IBM may provide to you. The term does not include Machine Code, LIC, or Materials.

**Service** is performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information database) IBM makes available to you.

**Specifications** is a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications" and an ICA Program's Specifications in a document entitled "Licensed Program Specifications."

**Specified Operating Environment** is the machines and programs with which an ICA Program is designed to operate, as described in the ICA Program's Specifications.

## 1.2 Agreement Structure

IBM provides additional terms for Products and Services in documents called "Attachments" and "Transaction Documents" which are also part of this Agreement. All transactions have one or more associated Transaction Documents (such as an invoice, supplement, schedule, exhibit, statement of work, change authorization, or addendum).

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.

You accept the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Product or Service, or allowing others to do so, or 3) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts your order by 1) sending you a Transaction Document, 2) shipping the Machine or making the Program available to you, or 3) providing the Service.

## 1.3 Delivery

IBM will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

## 1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform you in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as IBM specifies which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Services for which you prepay must be used within the applicable contract period. Unless IBM specifies otherwise, IBM does not give credits or refunds for unused prepaid Services.

### Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services or connect time for network Services). You agree to provide actual usage data if IBM specifies. If you make changes to your environment that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless IBM agrees otherwise, IBM does not give credits or refunds for charges already due or paid. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

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

IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving you three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to you if 1) IBM receives your order before the announcement date of the increase and 2) one of the following occurs within three months after IBM's receipt of your order:

1. IBM ships you the Machine or makes the Program available to you;
2. you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine; or
3. a Program's increased use charge becomes due.

### Payment

Amounts are due upon receipt of invoice and payable as IBM specifies in a Transaction Document. You agree to pay accordingly, including any late payment fee.

If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in an invoice or supply exemption documentation. You are responsible for any personal property taxes for each Product from the date IBM ships it to you.

## 1.5 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM 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 IBM specifies in the notice, only to new orders, renewals, and on-going transactions that do not expire. For on-going transactions with a defined renewable contract period, you may request that IBM defer the change effective date until the end of the current contract period if 1) the change affects your current contract

period and 2) you consider the change unfavorable. Changes to charges will be implemented as described in the Charges and Payment section above.

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

## 1.6 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When you order IBM Products or Services (marketed to you by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Products or Services to you under the warranties and other terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

## 1.7 Patents and Copyrights

For purposes of this section, the term "Product" includes Materials, Machine Code and LIC.

If a third party claims that a Product IBM provides to you infringes that party's patent or copyright, IBM will defend you against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that you:

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

### Remedies

If such a claim is made or appears likely to be made, you agree to permit IBM to enable you to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, you agree to return the Product to IBM on its written request. IBM will then give you a credit equal to:

1. for a Machine, your net book value provided you have followed generally-accepted accounting principles;
2. for an ICA Program, the amount paid by you or 12 months' charges (whichever is less); and
3. for Materials, the amount you paid IBM for the creation of the Materials.

This is IBM's entire obligation to you regarding any claim of infringement.

### Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by you or by a third party on your behalf;
2. your modification of a Product, or an ICA Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party outside your Enterprise; or
4. infringement by a non-IBM Product or an Other IBM Program alone.

## 1.8 Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than:

1. payments referred to in the Patents and Copyrights section above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages 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. For purposes of this item, the term "Product" includes Materials, Machine Code, and LIC.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

### Items for Which IBM is Not Liable

Under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

1. loss of, or damage to, data;
2. special, incidental, or indirect damages or for any economic consequential damages; or
3. lost profits, business, revenue, goodwill, or anticipated savings.

## 1.9 General Principles of Our Relationship

1. Neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations 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 of us is free to enter into similar agreements with others.
4. Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
5. Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
6. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
7. Neither of us will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.
8. Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.
9. Neither of us may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither of us will unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
10. You agree not to resell any Service without IBM's prior written consent. Any attempt to do so is void.
11. You agree that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as described in the Patents and Copyrights section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.
12. You agree 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 IBM's authorized remarketers.
13. You agree to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts IBM removes become IBM's property. You represent that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to IBM.
14. You agree that you are responsible for the results obtained from the use of the Products and Services.
15. You agree to provide IBM with sufficient, free, and safe access to your facilities and systems for IBM to fulfill its obligations.
16. You agree to allow International Business Machines Corporation and its subsidiaries to store and use your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of International Business Machines Corporation 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).
17. You agree to comply with all applicable export and import laws and regulations.

## 1.10 Agreement Termination

Either of us may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's 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 the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

## 1.11 Geographic Scope and Governing Law

The rights, duties, and obligations of each of us are valid only in the United States except that all licenses are valid as specifically granted.

Both you and IBM consent to the application of the laws of the State of New York to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

## Part 2 - Warranties

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### 2.1 The IBM Warranties

#### Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

#### Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

The warranty period for an ICA Program expires when its Program Services are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability.

If an ICA Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the ICA Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

#### Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

#### Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

### 2.2 Extent of Warranty

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

The warranties stated above will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), 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 IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

## Part 3 - Machines

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### 3.1 Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's appropriate warranty terms apply.

### 3.2 Title and Risk of Loss

When IBM accepts your order, IBM agrees to sell you the Machine described in a Transaction Document. IBM transfers title to you or, if you choose, your lessor when IBM ships the Machine. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. You authorize IBM to file appropriate documents to permit IBM to perfect its purchase money security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to you or your designated location. Thereafter, you assume the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for you, covering the period until it is delivered to you or your designated location. For any loss or damage, you must 1) report the loss or damage in writing to IBM within 10 business days of delivery and 2) follow the applicable claim procedure.

### 3.3 Installation

You agree to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which you defer installation or a Customer-set-up Machine) installed.

You are responsible for installing a Customer-set-up Machine and, unless IBM agrees otherwise, a non-IBM Machine.

#### Machine Features, Conversions and Upgrades

IBM sells features, conversions and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. You further represent that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. You agree to allow IBM to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, IBM may terminate the transaction and you must return the feature, conversion, or upgrade to IBM at your expense.

### 3.4 Machine Code and LIC

Machine Code is licensed under the terms of the agreement provided with the Machine Code. Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which you are authorized by IBM in writing and for which payment is received by IBM.

Certain Machines IBM specifies (called "Specific Machines") use LIC. IBM will identify Specific Machines in a Transaction Document. International Business Machines Corporation, one of its subsidiaries, or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold). LIC is licensed under the terms of the agreement provided with the LIC. LIC is licensed only for use to enable a Specific Machine to function in accordance with its Specifications and only for the capacity and capability for which you are authorized by IBM in writing and for which payment is received by IBM.

## Part 4 - ICA Programs

### 4.1 License

When IBM accepts your order, IBM grants you a nonexclusive, nontransferable license to use the ICA Program in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

#### Authorized Use

Under each license, IBM authorizes you to:

1. use the ICA Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, you may use another machine temporarily. If the Designated Machine cannot assemble or compile the ICA Program, you may assemble or compile the ICA Program on another machine. If you change a Designated Machine previously identified to IBM, you agree to notify IBM of the change and its effective date;
2. use the ICA Program to the extent of authorizations you have obtained;
3. make and install copies of the ICA Program, to support the level of use authorized, provided you reproduce the copyright notices and any other legends of ownership on each copy or partial copy, and
4. use any portion of the ICA Program IBM 1) provides in source form, or 2) marks restricted (for example, "Restricted Materials of IBM") only to -
  - a. resolve problems related to the use of the ICA Program, and

- b. modify the ICA Program so that it will work together with other products.

#### **Your Additional Obligations**

For each ICA Program, you agree to:

1. comply with any additional terms in its Specifications or a Transaction Document;
2. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with IBM's terms regarding ICA Programs; and
3. maintain a record of all copies and provide it to IBM at its request.

#### **Actions You May Not Take**

You agree not to:

1. reverse assemble, reverse compile, or otherwise translate the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
2. sublicense, assign, rent, or lease the ICA Program.

### **4.2 Program Components Not Used on the Designated Machine**

Some ICA Programs have components that are designed for use on machines other than the Designated Machine on which the ICA Program is used. You may make copies of a component and its documentation in support of your authorized use of the ICA Program. For a chargeable component, you agree to notify IBM of its Date of Installation.

### **4.3 Distributed System License Option**

For some ICA Programs, you may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than 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 ICA 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 IBM provides for the Basic license.

### **4.4 Program Testing**

IBM provides a testing period for certain ICA Programs to help you evaluate if they meet your needs. If IBM offers a testing period, it will start 1) the second business day after the ICA Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. IBM will inform you of the duration of the ICA Program's testing period.

IBM does not provide testing periods for DSLO copies.

### **4.5 Program Services**

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce your reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services 1) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), 2) until the date IBM specifies, or 3) for a period IBM specifies.

### **4.6 License Termination**

You may terminate the license for an ICA Program on one month's written notice, or at any time during the ICA Program's testing period.

Licenses for certain replacement ICA Programs may be obtained for an upgrade charge. When you obtain licenses for these replacement ICA Programs, you agree to terminate the license of the replaced ICA Programs when charges become due, unless IBM specifies otherwise.

IBM may terminate your license if you fail to comply with the license terms. If IBM does so, your authorization to use the ICA Program is also terminated.

## Part 5 - Services

### 5.1 Personnel

Each of us is responsible for the supervision, direction, control, and compensation of our respective personnel. IBM reserves the right to determine the assignment of its personnel. IBM may subcontract a Service, or any part of it, to subcontractors selected by IBM.

### 5.2 Materials Ownership and License

IBM will specify Materials to be delivered to you. IBM will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which you will have all right, title, and interest (including ownership of copyright). IBM will retain one copy of the Materials. You grant IBM 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, created during the Service performance period or otherwise (such as those that preexist the Service), in which IBM or third parties have all right, title, and interest (including ownership of copyright). IBM will deliver one copy of the specified Materials to you. IBM grants you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Type II Materials.

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

### 5.3 Service for Machines (during and after warranty)

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform you of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at your location or a service center.

When the type of Service requires that you deliver the failing Machine to IBM, you agree to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to you at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

You agree to:

1. obtain authorization from the owner to have IBM service a Machine that you do not own; and
2. where applicable, before IBM provides Service -
  - a. follow the problem determination, problem analysis, and service request procedures that IBM provides;
  - b. secure all programs, data, and funds contained in a Machine, and
  - c. inform IBM of changes in a Machine's location.

#### Replacements

When Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under IBM's service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Some parts of IBM Machines are designated as Customer Replaceable Units (called, "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to you for replacement by you. You must return all defective CRUs to IBM within 30 days of your receipt of the replacement CRU. You are responsible for downloading designated Machine Code and LIC updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

#### Items Not Covered

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;

3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which IBM is not responsible;
5. service of Machine alterations; or
6. service of a Machine on which you are using capacity or capability, other than that authorized by IBM in writing.

#### **Warranty Service Upgrade**

For certain Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

### **5.4 Maintenance Coverage**

Whenever you order maintenance Service for Machines, IBM will inform you of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may have IBM restore it for a charge. Alternatively, you may withdraw your request for maintenance Service. However, you will be charged for any maintenance Service which IBM has performed at your request.

### **5.5 Automatic Service Renewal**

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

### **5.6 Termination and Withdrawal of a Service**

Either of us may terminate a Service if the other does not meet its obligations concerning the Service.

You may terminate a Service, on notice to IBM provided you have met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. For a maintenance Service, you may terminate without adjustment charge provided any of the following circumstances occur:

1. you permanently remove the eligible Product, for which the Service is provided, from productive use within your Enterprise;
2. the eligible location, for which the Service is provided, is no longer controlled by you (for example, because of sale or closing of the facility); or
3. the Machine has been under maintenance Service for at least six months and you give IBM one month's written notice prior to terminating the maintenance Service.

You agree to pay IBM for 1) all Services IBM provides and any Products and Materials IBM delivers through Service termination, 2) all expenses IBM incurs through Service termination, and 3) any charges IBM incurs in terminating the Service.

IBM may withdraw a Service or support for an eligible Product on three months' written notice to you. If IBM withdraws a Service for which you have prepaid and IBM has not yet fully provided it to you, IBM will give you a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.



## Exhibit E - Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide appropriate protection for Confidential Information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

### 1. Disclosure

Information will be disclosed either:

1. in writing;
2. by delivery of items;
3. by initiation of access to Information, such as may be in a data base; or
4. by oral and/or visual presentation.

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

### 2. Obligations

The Recipient agrees to:

1. use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
2. use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

1. its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares;
2. any other party with the Discloser's prior written consent.

Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

### 3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

### 4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

1. already in its possession without obligation of confidentiality;
2. developed independently;
3. obtained from a source other than the Discloser without obligation of confidentiality;
4. publicly available when received, or subsequently becomes publicly available through no fault of the Recipient;
5. disclosed by the Discloser to another without obligation of confidentiality; or
6. required to be disclosed pursuant to California Government Code Section 6250-6270 (California Public Records Act).

The Recipient may disclose, publish, disseminate, and use the ideas, concepts, know-how and techniques, related to the Recipient's business activities, which are in the Discloser's Information and retained in the

memories of Recipient's employees who have had access to the Information under this Agreement. Nothing in this paragraph gives the Recipient the right to disclose, publish, or disseminate:

1. the source of Information;
2. any financial, statistical or personnel data of the Discloser; or
3. the business plans of the Discloser.

## 5. Disclaimers

### THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

## 6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

1. providing to others products or services which may be competitive with products or services of the Discloser;
2. providing products or services to others who compete with the Discloser; or
3. assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. 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.

Both of us consent to the application of the laws of the State of California to govern, interpret, and enforce all of your and our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures.

## Cost

Provide pricing and cost information for the project. Include hourly rates for all proposed team members and a total project cost. Also provide pricing for any proposed equipment, software, or hardware costs and any other related expenses for the project. Discuss any budget control measures of your firm.

### IBM Response

The solution, including prices, presented in this document is based on the general information that the Harbor Department has provided to IBM and the assumptions outlined in our response. Both the solution and the prices are subject to change based on corrections or modifications to the information provided by the Harbor Department or alterations to the Harbor Department environment.

This RFP response and the prices below are valid for a period of ninety (90) days following submission.

Description	Prices
	3 Year Term
Hot Site Services and Work Area Recovery Services, Monthly Charge	\$7,990/month
<b>Total Project Cost for 36 Month Term</b>	<b>\$287,640</b>
Additional charges include: Initial Recovery Charge; Daily Recovery Charge per day thereafter; Additional Recovery Exercise Time, per 4-hour block; and Additional Recovery Exercise, per Exercise. Please see Equipment Supplements Included in Appendix A for these charges.	

## EXHIBIT G

### BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to [www.lacity.org/finance](http://www.lacity.org/finance) to download the business tax registration application.

#### MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101 (213) 473-5901

## EXHIBIT H - AFFIRMATIVE ACTION PROGRAM PROVISIONS

### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
  - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## EXHIBIT I

### Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### (c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.