



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

1. Introduction

Thank you for your interest in the i5, iSeries and AS/400 system restore test Service ("Service"). The Service is provided to you, as a registered subscriber and authorized user ("You", "Your" or "company"), by GST, Inc. ("US", "We" or "GST").

We provide the Service according to the terms and conditions of this Agreement (including Your registration information) (collectively the "Agreement"). This Agreement constitutes the entire agreement between You and Us, superseding any prior written or oral agreements about the Service. Further, this Agreement will be effective when accepted by You and, unless terminated earlier in accordance with any of the other provisions, will remain in force until either of us terminates the Agreement.

By registering for and continuing to use the Service, You represent to Us that You are of legal age and capacity, have authority from Your company to enter into this Agreement, and that You reside in the United States of America in which You will register for the Service. You are responsible for payment of charges, Your use of the Service, and the results obtained therefrom.

You accept the Service by clicking the "I Accept" button at the end of this Agreement. If you do not wish to accept these terms, you may click the "I Do Not Accept" button, and you will not be registered or billed for the Service.

2. The Service

The Service provides for the loading of part, or all, of Your OS/400 software required to restore Your single i5, iSeries, or AS/400 or System Image and perform tape validation. Within two (2) weeks of GST's receipt of Your backup tapes, but no later than thirty (30) days after, GST will provide You with: (a) System restore job log via tape media; and (b) a summary letter detailing any problems outside of the restore job log encountered with the restore. Upon completion of the system restore test, GST will remove Your data files from its system.

3. Charges and Payment

You agree to pay for the Service, including charges for shipping Your tapes to and from the GST Recovery Center; plus applicable duties, taxes, levies, or fees, as specified in GST's invoice.

4. Changes, Communications, and Notifications

We may change the terms of this Agreement, including our fees and charges, on seven (7) days notice by email to You. We will post any such changes to the Service's Web site. You agree that it is Your responsibility to check Your e-mail and the Service's Web site.



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

Each of us agrees that:

- a. an electronic communication appearing to be from the e-mail address You supply to Us establishes You as its originator and has the same effect as a document with Your written signature on it; and
- b. a copy of an electronic communication made by reliable means is considered to have the same validity as the original electronic communication.

If You find any change We make to be unacceptable You may terminate this Agreement by following the steps described in Section 7. Your use of the Service after the effective date of a change constitutes Your continued acceptance of the Service terms and the Service, as changed.

5. Your Responsibilities You agree:

- a. to ensure that the system image provided to GST for restore was created through the OS/400 Save Menu Option 21 - Save Entire System, equivalent OS/400 commands as the OS/400 Save Menu "Option 21", or the OS/400 Backup Recovery and Media Services ("BRMS") program;
- b. that if the system image was created using BRMS, to provide a hard copy of the BRMS Recovery Analysis ("Recovering your Entire System") Report created via the STRRCYBRM OPTION(*SYSTEM) ACTION (*REPORT) for each save media set;
- c. to provide one (1) complete set of clearly labeled save tapes, and:
 - Hard copy of tape labels created via the DSPTAP DEV(device_name) OUTPUT(*PRINT) command.
 - to provide a blank tape that will be used to provide You with a restore joblog.
 - Pre-addressed shipping labels with Your account number to allow Us to return Your media and restore joblog.
 - to provide GST with the name of Your representative, who will be available to GST by telephone to provide GST information and/or assistance when needed during GST's performance of the Service;
- d. to ensure the backup media from which GST is to load are clearly labeled and/or marked with unique volume identifiers;
- e. that restoring daily saves, individually saved libraries, saved spool files, the applying of journals, and/or system information verification by GST is not part of the Service;
- f. to provide Us with accurate and complete registration information (including, but not limited to, Your name, e-mail address, postal address, and telephone number) and to promptly report any changes to such information to Us;
- g. that We or third parties own or have licenses to the software and intellectual property rights to all components of the Service. You are responsible for Your own Internet Service Provider arrangements and for providing and maintaining all computer equipment and software necessary to access the Service;
- h. not to resell, remarket, or otherwise redistribute any portion of the Service or to use the Service for consulting, unless specifically permitted in writing by Us to do so;
- i. not to assign, transfer, or delegate this Agreement or Your rights or obligations under it and that any attempt to do so is void;



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

- j. be responsible *for* promptly obtaining and providing to Us all Required Consents necessary *for* Us to provide the Service described herein. A Required Consent means any consents or approvals required to give GST and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products You use, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. You will indemnify, defend and hold GST, its affiliates and subcontractors, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against GST, alleged to have occurred as a result of Your failure to provide any Required Consents. We will be relieved of the performance of any obligations that may be affected by Your failure to promptly provide any Required Consents to Us;
- k. that You are not a specifically designated individual or entity under any U.S. (or other) embargo or otherwise the subject, either directly or indirectly, to any order issued by any agency of the U.S. Government (or any other government) limiting, barring, revoking or denying, in whole or in part, Your export privileges. You agree to notify Us immediately in the event You become subject to any such order;
- l. to not knowingly use this Service to send or receive any information in the form of text, graphics, or programs (whether or not provided by Us) that infringes any patent, copyright, trademark, trade secret, or other intellectual property right, privacy or similar right of another; and
- m. that it is Your sole and exclusive responsibility to maintain *a* backup copy of Your data and files.

6. General Terms

Each of us agrees that:

- a. We do not guarantee that our security procedures will prevent the loss of, alteration of, or improper access to Your data and/or the Service. You are responsible *for* determining whether these security provisions meet Your needs;
- b. any terms varying from or adding to this Agreement in any order or written or electronic communication from You are void;
- c. 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. In addition, 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;
- d. neither You nor We will bring a legal action related to this Agreement more than two years after a cause of action arises;
- e. any trial related to this Agreement will be heard by a judge without a jury; and
- f. if any provision of this Agreement is determined to be invalid, all other provisions remain in *force*.



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

7. Termination

At our initiation

We may at any time modify or discontinue any or all aspects of the Service or terminate, withdraw or restrict Your use of the Service (in whole or in part):

- a. without notice, if We, in our sole judgment, determine or receive information that: 1) You have violated the terms of this Agreement; 2) Your use of the Service is disruptive or causes a malfunction of the Service; 3) Your use of the Service (or any part thereof) may violate the copyright or other intellectual property rights of GST or a third party or may violate any other applicable laws and regulations; or 4) We receive an order from a governmental body or a court of competent jurisdiction requiring Us to do so;
- b. for our convenience, upon seven (7) days notice to You.

Upon termination of this Agreement, all rights granted to You under this Agreement terminate immediately. If We terminate this Agreement or terminate, withdraw, or restrict your use of the Service, You will remain liable for all fees and charges accrued up to the date of termination. Following such termination or suspension, You agree not to reregister for, or otherwise access, the Service without our prior written approval.

We reserve the right to delete any data files associated with Your use of the Service upon termination of this Agreement.

At Your initiation

You may terminate this Agreement for any reason at any time by contacting Us using the e-mail address on the Service Web site. Upon termination, the Service will no longer be accessible to You. Termination by You is effective immediately. You will remain liable to Us for all fees and charges accrued up to the date of termination of this Agreement.

8. Disclaimer of Warranties

THE SERVICE AND ANYTHING WE PROVIDE YOU AS PART OF THE SERVICE ARE PROVIDED WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS CONCERNING THE MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICE OR ANYTHING WE PROVIDE YOU AS PART OF THE SERVICE. YOU ASSUME ALL RISK FOR USING THE SERVICE OR ANYTHING WE PROVIDE YOU AS PART OF THE SERVICE IN ANY ACTIVITIES WHERE DAMAGE OR INJURY TO PERSONS, PROPERTY, OR BUSINESS MAY RESULT IF AN ERROR OCCURS. WITHOUT LIMITATION, NO WARRANTY OR CONDITION IS GIVEN THAT THE SERVICE IS ERROR-FREE OR UNINTERRUPTED. YOU ACKNOWLEDGE THAT ANYTHING WE PROVIDE YOU AS PART OF THE SERVICE MAY CONTAIN ERRORS AND THAT YOUR USE OF ANYTHING WE PROVIDE YOU AS PART OF THE SERVICE IS AT YOUR OWN RISK.



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

WE DO NOT WARRANT THAT OUR SECURITY PROCEDURES WILL PREVENT THE LOSS OF, ALTERATION OF, OR IMPROPER ACCESS TO, YOUR DATA. WE ARE NOT RESPONSIBLE FOR INVALID DESTINATIONS AND TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF, YOUR INFORMATION CARRIED OVER TELECOMMUNICATIONS CARRIERS' OR OTHER PROVIDERS' FACILITIES.

WE, INCLUDING OUR LICENSORS, DISCLAIM ANY LIABILITY OR RESPONSIBILITY ARISING FROM ANY CLAIM THAT YOUR ACCESS TO, OR USE OF, THE PROGRAM, SERVICE, OR RELATED PRODUCTS WE OR OTHER SERVICE PROVIDERS PROVIDE INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. Your Rights and Our Limitation of Liability

Your sole right and exclusive remedy in the event of any breach of this Agreement, or if You are dissatisfied for any reason with Us, the Agreement, the Service or any guidelines or policies We may post from time to time, is as specified in this Section 9 and termination of this Agreement as provided in Section 7 (Termination).

Circumstances may arise where, because of a default on GST's part or other liability, You are entitled to recover damages from GST. In each such instance, regardless of the basis on which You are entitled to claim damages from GST (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), GST's exclusive liability and Your exclusive remedy is recovery of direct damages not to exceed the amount You paid to GST for the Service.

Under no circumstances is GST, 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.

Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages; in those jurisdictions GST's liability is limited to the extent permitted by law.

10. Confidential Information

Each of us agrees that the terms of this section apply to confidential information (Information) specified below identified as "Confidential" and which we disclose between us:

1. information regarding prospects and customers;
2. unannounced products and services, and any related technical information;
3. business plans;
4. any of the following information You provide to Us on our request:
 - reporting data;
 - customer satisfaction data;
 - financial data; and
 - sales information;



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

5. any information on the Web site identified as "Confidential". We may identify such information as confidential either in writing or on the Web site. Your access of such information is considered Your agreement to accept it as confidential; and
6. any other information which we agree in writing and which is identified as "Confidential".

The recipient of the Information, for a period of two years from the initial date of disclosure, agrees to use the 1) 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) discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the discloser.

The recipient may disclose Information within the Enterprise to those who have a need to know, and to any other party with the discloser's prior written consent, if there is a written agreement with the party sufficient to require that party to treat the Information in accordance with this Agreement.

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, or 5) disclosed by the discloser to another without obligation of confidentiality.

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.

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND. The recipient uses Information provided by the discloser at its own risk.

Neither this Section 10 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.

The receipt of Information pursuant to this Agreement will not preclude, or 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 product\$ or services to others who compete with the discloser, or 3) assigning its employees in any way it may choose.



Terms & Conditions

i5, iSeries and AS400 Restore Testing Service

11. Indemnity

You agree to defend, indemnify and hold Us, our affiliates, contractors, service providers, employees, and agents harmless, from and against any and all liabilities, cost and expenses, including reasonable attorneys' fees related to or arising from any breach by You of this Agreement, failure by You to perform Your obligations, Your use of the Service, or the posting of any content on the Internet by You.

12. Governing Law

Both You and GST consent to the application of the laws of the State of California to govern, interpret, and enforce all of your and GST'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.