



**CTS COMPANIES**  
**SMART-DR SERVICE AGREEMENT**

**TERMS AND CONDITIONS**

CTS Companies dba. Unitel Leasing (“CTS”) agrees to provide to the customer (“You” or “Customer”) our SMART-DR backup and recovery service (the “Service”) for your initial clients (the “Initial Protected Clients”) and any subsequent clients you may choose to add (together, the “Protected Clients”) to the Service, as described in the applicable Limited Warranty and Service Level Agreement (the “Service Level Agreement”) in accordance with the following terms and conditions (“Agreement”).

**Term of Agreement**

You subscribe for the number of months of Service as shown in the “Length of Contract” line on the “Service Plan Table” (the “Initial Term”) for all Protected Clients You enroll in accordance with the service plan described below and set forth on the next page. The Initial Term for Your Protected Clients commences on the earliest of the date You add a Protected Client via the web user interface or 30 days after the date of this Agreement.

**Service Fees and Payments**

All charges for the SMART DR+ Service under this Agreement shall be specified below:

Payment terms are net twenty (20) days from invoice date. Any amount not paid when due will bear late charges at the rate of one and one-half percent (1.5%) per month compounded on a daily basis from the date due until the date paid. You shall be liable for all expenses incurred in collecting charges that are in arrears, including reasonable attorneys’ fees. You agree to pay all sales taxes where applicable.

If you fail to pay the charges of CTS for a period of forty-five (45) days after the date of the invoice, CTS may, after providing ten (10) days prior notice by email, at its option (a) cease providing the Service and/or (b) refuse request to restore Your data. If You are in arrears for a period of three (3) months or longer, CTS may, after providing ten (10) days prior notice by email, delete Your protected data. **IN THE EVENT CTS TAKES ANY ACTION PURSUANT TO THIS SECTION, IT SHALL HAVE NO LIABILITY TO YOU OR ANYONE CLAIMING BY OR THROUGH YOU.** Nothing herein shall preclude Distributor from pursuing other remedies authorized by statute or otherwise permitted by law.

**Additional Terms & Definitions**

You may add Protected Clients to Your service plan at any time. Charges for Your Service plan are based upon the number of clients amount of client data, as shown on the “Service Plan Table”, under protection. Charges for additional data capacity that is added within a month are prorated for the number of days in the month that the additional data was subscribed to the Service.

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**Default**

If any one of the following events ("event of default") shall occur, then to the extent permitted by applicable law, CTS shall have the right to exercise any one or more remedies set forth in this paragraph below: (a) Customer fails to pay, when due, and indebtedness of Customer to CTS arising independently of this Agreement, and such default shall continue for 5 days.

**a.** Customer's failure to pay or perform, when due, any of its liabilities or obligations contained or referred to herein:

**b.** Loss, theft, substantial damage, destruction or encumbrance of, to or on any of the Equipment covered by this Agreement or the levy, attachment or seizure of any such Equipment where the same is not adequately insured as required by this Agreement or in the reasonable judgment of CTS;

**c.** Customer's dissolution or failure to pay its debt as they become due;

**d.** A case proceedings in bankruptcy, reorganization, insolvency, receivership or assignment for the benefit of creditors is instituted by or against Customer and/or any guarantor of customer's obligation or liabilities hereunder or Customer takes any corporate action to authorize and of the foregoing;

**e.** Customer shall be in default under any obligation for loan repayment for the deferred purchase price of property or for rent payment under any lease of real or personal property and any applicable grace period with respect thereto shall have expired and the obligation shall not be contested in good faith by appropriate legal proceedings;

**f.** If Customer is an individual, the death of Customer;

**g.** To the extent permitted by law, Customer hereby waives any mandatory requirements of law, now or hereafter in effect which might limit or modify any of the remedies provided in this Agreement. LESSEE ACKNOWLEDGESTHAT THE TRANSACTION OF WHICH THIS AGREEMENT IS A PART IS A COMMERCIALTRANSACTION AND HEREBY WAIVES ITS RIGHT TO NOTICE AND HEARING ALLOWED BY STATE OR FEDERAL LAW WITH RESPECT TO ANY PRE-JUDGEMENTREMEDY WHICH LESSOR MAY DESIRE TO USE.

**Remedies**

The following remedies are available to CTS in the event a default should occur.

**a.** Provide written notice to Customer of the default, declare the entire balance of the unpaid Lease Payments for the full lease term immediately due and payable; sue for and receive all Lease Payments and any other payments then accrued or accelerated under this lease or any other leases plus the estimated fair market value of the Equipment at the end of the originally scheduled Lease term, however, all accelerated Lease payments and the estimated fair market value of the Equipment shall be discounted to the date of the default at six percent (6%) per year, but only to the extent permitted by law;

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- b.** Charge Customer interest on all monies due CTS at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum permitted by law;
- c.** Charge customer with a returned check or non-sufficient funds (NSF charge) to reimburse CTS for time and expense incurred with respect to a check that is returned for any reason including non-sufficient or uncollected funds, such NSF Charge is stipulated and liquidated at \$25.00; and
- d.** Charge Customer for (i) all expenses incurred by CTS in connection with the enforcement of any of CTS's remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment, and (ii) CTS's reasonable attorney's fees, (with or without suit) of at least 20% of the total monthly unpaid rental charges for the balance of the term of this Agreement. CTS and Customer acknowledge the difficulty in establishing the value for the unexpired lease term and therefore agree that the provisions of this Agreement represent an agreed measure of damages and are not to be deemed a forfeiture or penalty;
- e.** Whenever any Payment is not made by Customer when due, Customer agrees to pay CTS, with one month, an amount calculated at the rate often cents per one dollar for each delayed payment, within a minimum of \$25.00, as compensation for CTS's internal operating expenses as arising as a result of such delayed payment, but only to the extent permitted by law. Such amount is payable in addition to all amounts payable by Customer as a result of the exercise of any other remedies;
- f.** All remedies of CTS are cumulative, are in addition to any other remedies provided for by law, and may to the extent permitted by law, be exercised concurrently or separately. The exercise of any one remedy shall not be an election of such remedy or to preclude the exercise of any other remedy. No failure upon the part of CTS to exercise and no delay in exercising any right or remedy will indicate a waiver thereof or modify the terms of this Lease. A waiver of default shall not be waiver of any other or subsequent default. CTS's recovery shall in no event exceed the maximum recovery permitted by law.

**General**

- a.** All notices and consents required to be given hereunder shall be in writing and mailed to the address of the other party set forth on the face hereof or to such other address as such other party shall have designated by notice in writing;
- b.** This Agreement shall be governed by the laws of the State of Michigan and there are no understandings, agreements of representations, express or implied, not specified herein. As part of the consideration for CTS's executing this Agreement, Customer agrees that all actions or proceedings arising directly or indirectly from this Agreement shall be litigated only in courts having situs within the State of Michigan and the Customer hereby consents to the jurisdiction of any local, state, or federal court located within the State of Michigan and waives personal service of any and all process upon the Customer herein, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to the Customer at the address herein stated, and services so made shall be complete two (2) days after the same shall have been posted as aforesaid;

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c. This Agreement shall be binding on the successors and assigns of the parties and shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written amendment by the parties hereto;

d. Customer agrees that CTS may conduct a credit investigation of Customer, including the preparation of credit reports. The foregoing terms and conditions shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by the customer. This Agreement constitutes the entire agreement between CTS and Customer.

**Service Renewals**

This Agreement will automatically renew for successive one-year term at the end of Your Initial Term and any subsequent terms, unless a Termination Notice is sent to CTS Companies Address 30 days prior to the end of the current contract term. This Termination Notice should include: company name, contact name, telephone #, address and requested termination date.

**Upgrades**

Upgrades with higher financial commitment levels, are permitted at anytime, but will be effective the first day of the following month. For upgrades, the contract term is restarted to its original term commencing with the effective date of the upgrade.

**Personal Guaranty**

Each of the following agrees to be jointly and severally liable to CTS for any amount due under the terms of this Agreement. Each signer acknowledges by his or her signature that the whole sum listed is due and that there are no issues or facts that can or will be raised to defend or set off the amount due as stated in this Agreement. Each of the following agrees to be personally obligated under this Agreement as this is a guaranty of payment and agrees that he or she is legally responsible for payment of the Agreement immediately on default. No action has to be taken against the business entity first for You to be liable and responsible. Any legal action may be taken simultaneously against the principal under this Agreement as well as You. It is understood that this is an individual and personal guaranty.

Dated: \_\_\_\_\_ /s/ \_\_\_\_\_

Printed name: \_\_\_\_\_

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**SMART-DR Service Plan Table**

(see attached proposal for service detail)

|  |         |
|--|---------|
| Date of Agreement:                         | _____   |
| Length of Agreement in Months:             | ____    |
| Maximum GB Data Vault usage per Agreement: | _____   |
| Non-Recurring Charges:                     | \$_____ |
| <b>Monthly Recurring Charges:</b>          |         |
| Equipment Lease:                           | \$_____ |
| Data Vaulting:                             | \$_____ |
| Virtual Servers:                           | \$_____ |
| Co-Location:                               | \$_____ |
| Data Circuits:                             | \$_____ |
|  | =====   |
| <b>Total:</b>                              | \$_____ |

Customer Initials:\_\_\_\_\_

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**By signing, the Customer agrees to the terms and conditions set forth in this agreement**

AUTHORIZED SIGNER

Company Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Title \_\_\_\_\_ Email \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Tel # \_\_\_\_\_ Fax # \_\_\_\_\_

**Billing Contact**

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Title \_\_\_\_\_ Email \_\_\_\_\_

Supplementary Email Contact \_\_\_\_\_

Billing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Tel # \_\_\_\_\_ Fax # \_\_\_\_\_

**Initial Administrator**

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Title \_\_\_\_\_ Email \_\_\_\_\_

SMART DR+ Username (spaces are allowed) \_\_\_\_\_

( ) employee      ( ) consultant      ( ) distributor

Tel # \_\_\_\_\_ Fax # \_\_\_\_\_