



## Intel Configuration

<b>Recovery Assurance Fee Schedule</b>			<b>Introductory Rate Plans* [Select One]</b>		
Description of Recovery Equipment supplied to customer for disaster recovery or testing purposes is shown below. The amount of equipment and capacity provided is determined by the monthly subscription plan selected here. →			<input type="checkbox"/> \$599/mo.	<input type="checkbox"/> \$799/mo.	<input type="checkbox"/> \$999/mo.
<b>Recovery Equipment &amp; Storage Capacity</b>					
<b>Intel Servers</b> any combination of below servers up to a total of →			10	15	20
Single Processor x 2Gb RAM / 2x 146Gb	<b>Qty.</b>	Max per each server type →	10	15	20
Dual Processor x 4Gb RAM / 2 x 146Gb	<b>Qty.</b>		10	15	20
Dual Processor x 8Gb RAM / 2 x 146Gb	<b>Qty.</b>		5	10	15
Quad Processor x 16Gb RAM / 2 x 146Gb	<b>Qty.</b>		1	2	3
<b>External SAN Disk - Total Logical Unit (LUN) Capacity</b>			1TB	2TB	3TB
<b>LTO 2/3/4 Tape Drive</b>			1	1	1
<b>Plan Features &amp; Services</b>					
<b>Internet Access for VPN connectivity</b>			3Mb	3Mb	3Mb
<b>Workstations for Recovery Personnel</b>			2	2	2
<b>Facility Availability within:</b>			24 hours	24 hours	24 hours
<b>Equipment Availability within:</b>			24 hours	24 hours	24 hours
<b>Availability of Experienced Recovery Personnel</b>			T&M	T&M	T&M
<b>Availability of Experienced JDE Resources</b>			T&M	T&M	T&M
<b>Additional Services, Fees &amp; Hourly Rates:</b>					
Disaster - Declaration Fee			\$5,000	\$7,000	\$9,000
Disaster - Daily Site & Equipment Usage Fee			\$1,000	\$1,000	\$1,000
Testing - Facility & Equipment Set-up Fee			\$3,000	\$4,000	\$5,000
Testing - Daily Site & Equipment Usage Fee			\$1,000	\$1,000	\$1,000
Professional Systems & Data Recovery Services			\$225/hr.	\$225/hr.	\$225/hr.
JD Edwards Technical Application Services			\$250/hr.	\$250/hr.	\$250/hr.
Network & Connectivity Support			\$200/hr.	\$200/hr.	\$200/hr.
On-site Emergency Server Build Requests			\$2,000/ea.	\$2,000/ea.	\$2,000/ea.

<b>Additional Recovery Equipment &amp; Storage Capacity:</b>	<b>Qty.</b>	<b>Mo. Unit Price</b>	<b>Totals</b>
Single Processor x 2Gb RAM / 2x 146Gb	0	\$25	\$0
Dual Processor x 4Gb RAM / 2 x 146Gb	0	\$50	\$0
Dual Processor x 8Gb RAM / 2 x 146Gb	0	\$75	\$0
Quad Processor x 16Gb RAM / 2 x 146Gb	0	\$100	\$0
500Gb External SAN Disk – Total Logical Unit (LUN)Capacity	0	\$100	\$0
LTO 2/3/4 Tape Drive	0	\$25	\$0
<b>Total Additional Monthly Fees</b>			<b>\$0.00</b>

\*Monthly subscription fees are based on a 36 month term. All subscription plans are subject to WTS' standard terms and conditions attached to this Fee Schedule.

**Term of the Agreement:** 36 Months  
**Monthly Subscription Fee:** \$ 0.00  
**Additional Monthly Fees:** \$ 0.00  
**Total Monthly Fees:** \$ 0.00

**Effective Date:**  
**Company Name:**  
**Contact Name:**  
**Authorized Signature:** \_\_\_\_\_

## 1. RECOVERY SERVICES

- 1.1. Data Center –WTS will provide the recovery equipment as described in the Fee Schedule (“Recovery Equipment”) for Customer’s use at WTS’ Data Center(s) as described in this Agreement. There are no other Services provided by WTS to Customer, except for any services provided by WTS on a time and materials and as available basis. Customer’s use of the Recovery Equipment and WTS’ Data Center(s) is subject to any rules and regulations provided to Customer by WTS and any applicable requirements of WTS’ lease with its landlord. Customer shall indemnify, defend and hold harmless WTS and its officers, directors, employees, subcontractors and agents from and against any and all losses arising from (i) claims by third parties, (ii) bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of Customer, its personnel or agents, or (iii) breach of Customer’s obligations, representations or warranties under this Agreement.
- 1.2. Recovery Equipment – Within twenty-four (24) hours of receiving a disaster declaration notice from Customer, WTS will use commercially reasonable efforts to provide Customer access to Recovery Equipment with a configuration at least equal to or greater than the configuration listed for the plan selected by Customer in the fee schedule attached to these terms and conditions (“Fee Schedule”). Customer may request additional capacity by signing and submitting to WTS a new Fee Schedule. Increased capacity and related fees will be effective on the later of the date (i) when WTS receives the signed change order from Customer and signs a fully executed change order or (ii) the requested effective date specified by Customer in the Fee Schedule. WTS will prepare the Recovery Equipment to be restore ready; after that, Customer must provide both the OS and all required software keys, licenses and/or consents to permit the use of Customer’s third party software, or other material on the Recovery Equipment during a disaster or a test. Customer may notify WTS upon the occurrence of a disaster requesting access to and use of the Recovery Equipment located at the Data Center. Any verbal notice must be followed by written or email notice within twelve (12) hours of the disaster declaration notice.
- 1.3. Disaster Recovery Test(s) – Customer may chose to install and run any software and data at the Data Center in order to validate Customer’s disaster recovery capability. No test(s) or other services are included in the monthly fees for this Agreement. Customer is responsible for performing any recovery and the completeness, results and success of any recovery. Customer may request WTS to provide assistance to Customer which WTS will provide on an as available and time and materials basis as described in the Fee Schedule. When conducting a test, Customer will only use the Recovery Equipment for testing its disaster recovery procedures and not for production purposes.
- 1.4. Connectivity – Unless otherwise specified in this Agreement, WTS will provide Customer with necessary VPN specifications to enable Customer to build a secure VPN tunnel between Customer’s network and the Recovery Equipment in a disaster or test. VPN equipment at Customer’s site is Customer’s responsibility, and must be compatible with WTS’ VPN specifications.
- 1.5. Access – In the event of a disaster or test, WTS will provide Customer escorted access to the Data Center and Recovery Equipment.
- 1.6. Multiple Disaster - Customer acknowledges that the availability of Recovery Equipment will be on a first-come, first-served basis and WTS makes no representation or warranty regarding the availability of Recovery Equipment at any particular time. WTS will use commercially reasonable efforts to coordinate and arrange for access to and use of the Recovery Equipment(s) when multiple disasters are declared. If the Recovery Equipment(s) is in use for another customer’s disaster recovery, WTS will use commercially reasonable efforts to provide alternative Recovery Equipment equal to or greater in processing capabilities within 48 hours after the original required delivery time. If during a test conducted by Customer, a disaster is declared by another customer, the Customer’s test may be terminated immediately and rescheduled for another mutually agreeable time.; no additional Testing Facility Equipment Setup Fee will apply.

## 2. FEES AND PAYMENT.

The fees for the Recovery Equipment and other services are as stated on the Fee Schedule. WTS shall provide a monthly invoice to Customer thirty (30) days in advance of the calendar month to which recurring (monthly) charges relate. One-time charges shall be due and payable within thirty (30) days of the invoice date. WTS reserves the right to require any disaster declaration fee or testing fee to be paid in advance. Recurring (monthly) charges shall be payable

in advance and shall be due on or before the first day of the calendar month to which the charges relate. Any partial months' will be pro-rated. Monthly charges and the term of the Agreement will begin on the later of the date ("Effective Date") (i) when WTS receives the signed Agreement from Customer and signs a fully executed Agreement or (ii) the requested effective date specified by Customer in the Fee Schedule. WTS is not obligated to provide any Services or any Recovery Equipment to any Customer with unpaid outstanding invoices. Invoices not paid when due shall be subject to an interest charge of one percent (1%) per month on the unpaid balance. Except for WTS' privilege or income taxes, Customer shall be responsible for any and all use, excise or other taxes or governmental charges arising from this Agreement. WTS reserves the right to increase the hourly rates on the Fee Schedule, upon thirty (30) days' prior written notice to Customer but such rates shall not be increased by more than the greater of the aggregate increase in the Consumer Price Index, All Urban Consumers (the "CPI"), or five percent (5%) in any one (1) year period.

### **3. LIMITATIONS ON WARRANTY AND LIABILITY.**

#### **3.1. Limitations on Warranty and Liability.**

- a) Customer represents and warrants to WTS that (i) Customer has the proper number and type of valid licenses for the software to be used, tested or recovered at the Data Center and (ii) that it is not experiencing a disaster at the time Customer signs this Agreement or any change order to this Agreement.
- b) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3, WTS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, THE RECOVERY EQUIPMENT, SERVICES, AND THE DATA CENTER, AND HEREBY EXCLUDES ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. EXCEPT FOR CLAIMS FOR BREACH OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS OR FOR ANY AMOUNTS DUE TO WTS UNDER THIS AGREEMENT, IN NO EVENT SHALL WTS OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST PROFITS ARISING OUT OF ANY BREACH OF THIS AGREEMENT, OR ARISING OUT OF CUSTOMER'S USE OF OR INABILITY TO USE THE DATA CENTER, RECOVERY EQUIPMENT OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

3.2. Exclusivity of Remedy. CUSTOMER'S SOLE REMEDY AGAINST WTS FOR LOSS OR DAMAGE CAUSED BY OR ARISING IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL BE THE RECOVERY OF DAMAGES NOT TO EXCEED IN THE AGGREGATE TWELVE (12) MONTH'S COMPENSATION PAYABLE TO WTS UNDER THIS AGREEMENT.

3.3. Force Majeure. Neither party shall be liable for any failure to perform its obligations hereunder due to supervening conditions beyond such party's control, including but not limited to, acts of God, strikes, emergencies, the Internet, utility failure (including without limitation, communication links failure), mechanical failure, regulatory or other governmental action, terrorism or terrorism related security issues, action or inaction by the other party hereto ("collectively, "Force Majeure"). If a party fails to perform due to an event described in this Section 3.3, (i) such party shall promptly provide notice to the other party hereto of the occurrence of such event, and (ii) such party shall attempt to mitigate the failure to perform caused by such event.

### **4. TERM AND TERMINATION.**

This Agreement will commence as of the Effective Date and continue for the term specified the Fee Schedule, unless terminated earlier, as provided in this Section 4. WTS may terminate the Agreement if Customer materially breaches any representation, warranty, covenant or obligation contained in this Agreement. A material breach includes, but is not limited to, Customer's failure to make payments to WTS when due under this Agreement. This Agreement will automatically terminate at no cost to either party on the date Customer enters into a managed disaster recovery services agreement directly with WTS. This Agreement will automatically renew for an additional one year term, unless either party provides notice of its intent not to renew at least ninety (90) days prior to the end of the then-current term.

**5. CONFIDENTIALITY.**

Each party agrees not to disclose to any third party any data or confidential information of the other party without the other party's written consent. Notwithstanding the foregoing, neither party's confidentiality obligations hereunder shall apply to the extent confidential information includes information: (a) known by the other party when received; (b) lawfully obtainable from other sources; (c) which must be disclosed under applicable court order or law; or (d) for which such duty as to confidentiality is waived by the other party.

**6. MISCELLANEOUS.**

6.1. Notices; Entire Agreement; Governing Law; Waiver. All notices and other communications shall be in writing and shall be given by commercial overnight courier or fax (with confirmation of receipt) sent to the parties at their respective addresses set forth beneath their signatures below or to such other address as a party may subsequently designate by advance written notice to the other party. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements. In the event of a conflict between the terms of the Fee Schedule and remaining terms of this Agreement, the remaining terms of this Agreement shall govern. This Agreement shall be governed by the laws of the State of Washington and may be modified only in a writing signed by both parties. The venue for any action or proceeding relating to this Agreement shall be in the Superior Court for King County, Washington. The most prevailing party in any action to enforce this Agreement shall be reimbursed or paid by the other party for its reasonable attorneys' fees and all other costs of enforcement. If any provision of this Agreement is held to be invalid or unenforceable to any extent in any context, it shall nevertheless be enforced to the fullest extent allowed by law in that and other contexts, and the validity and force of the remainder of this Agreement shall not be affected. Failure or delay on the part of any party in exercising any rights, power or privileges under this Agreement shall not be deemed a waiver of any exercise of any right, power or privilege. WTS and Customer are independent contractors as to each other and at no time shall either party be deemed to be or hold itself out as the agent, partner or representative of the other party. This Agreement may be executed in one or more counterparts.

6.2. Terms of Agreement. Without the other party's prior written consent, each party hereto agrees not to disclose to any third party any of the terms of this Agreement, including without limitation, any pricing information. However, each party may disclose the terms of this Agreement to its professional advisors and as required by applicable law or regulation.

6.3. Survival. The provisions of Sections 3, 4, 5, and 6 shall survive the termination or expiration of this Agreement.

CUSTOMER AND WTS AGREE THE PRICING IN THIS AGREEMENT REFLECTS AN AGREED ALLOCATION OF RISK AND LIMITATION OF REMEDIES AND LIABILITY AS STATED IN THIS AGREEMENT, EVEN IF ANY REMEDY UNDER THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

Executed by authorized representatives of the parties as of the Effective Date.

WTS, INC.

Customer:

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

1100 Olive Way, Suite 1100  
Seattle, WA 98101-1870  
Fax: (206) 436-3304

Address:  
City:                      State:                      Zip:  
Fax:

**Effective Date** (to be completed by WTS): \_\_\_\_\_