

SmartDrive Services Agreement

This SmartDrive Services Agreement (the "Agreement") is entered into as of this _____ day of _____, 2003 (the "Effective Date"), by and between _____, with offices located at _____ ("Customer") and the _____ division of Time Warner Cable, with offices located at _____ ("TWC").

WHEREAS, TWC is a provider of cable-based Internet connectivity services and related services, including without limitation, remote file backup and storage services; and

WHEREAS, Customer is a current customer of TWC's commercial Internet connectivity services and now desires to purchase from TWC, and TWC desires to provide to Customer, remote file backup and storage services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. SERVICES. Subject to the terms and conditions of this Agreement, Customer shall issue work orders (each a "Work Order") pursuant to this Agreement, in the form provided by or approved by TWC in writing, for the purpose of ordering TWC SmartDrive remote file backup and storage services set forth on Exhibit A (the "Services"). Upon TWC's acceptance of such Work Order, such Work Order shall be deemed incorporated into this Agreement. A Work Order shall be deemed accepted by TWC upon the earlier of (a) TWC's acceptance of a Work Order in writing; or (b) TWC's commencement of delivery of the Services set forth in such Work Order.

2. SET-UP & DELIVERY. Upon acceptance of a Work Order, TWC shall provide Customer's designated Services administrator ("Customer Administrator") with password-protected access to a web-based Services management portal (the "Portal"). Customer Administrator shall follow the directions on the Portal to set up Customer's Services account, including without limitation by allocating the amount of purchased storage space between Customer and its employees. Once Customer Administrator has set up Customer's Services account, any Customer employees provided with access to the Services by Customer Administrator may establish a backup schedule, as deemed appropriate in Customer's or its employees' sole discretion. As between the parties, Customer is solely responsible to ensure that Customer's and its employees' identified backup schedule and policy meets Customer's and its employees' needs. TWC shall use commercially reasonable efforts to provide the Services, 7 days a week, 24 hours a day, excluding scheduled maintenance, required repair and force majeure events.

3. SUPPORT & MAINTENANCE. TWC shall provide a telephone number and email address for inquiries and remote problem support for Service disruption. All such Customer support shall be provided to Customer's help desk personnel and employees. In no event shall TWC be responsible for providing such support: (a) for any network, equipment or software not provided and installed by TWC under this Agreement; (b) for issues or problems beyond its direct control; or (c) directly to any person other than Customer help desk personnel and employees. TWC shall use commercially reasonable efforts to make such second level support available 24x7x365.

4. CUSTOMER OBLIGATIONS. Customer's use of the Service (including all content stored on the Service) shall comply with all applicable laws and regulations, the terms of this Agreement and any Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, www.scbusinessrr.com, as may be modified from time to time by TWC. Customer shall be responsible for protecting the confidentiality of Customer's Portal password. As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Services and of Customer's Portal password provided to Customer hereunder, which use shall be deemed Customer's use for purposes of this Agreement; (b) all content that is stored or transmitted by its employees; and (c) ensuring that its employees use the Service in accordance with applicable laws and regulations, this Agreement and any Terms of Use. Customer shall not upload, post, transmit or otherwise make available on or via the Service any material that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation. TWC may remove, or demand the removal of, content that in its judgment violates these standards. Customer agrees to conform its equipment and software to TWC's then-current network specifications and system requirements for the Service. Customer understands and agrees that Customer's receipt of the Services hereunder is contingent upon Customer remaining an active TWC commercial customer for Internet connectivity services and that in the event Customer's commercial Internet connectivity services account is terminated or expires, TWC shall have the right to terminate or suspend this Agreement in its sole discretion. Customer agrees not to resell or make any use of the Service other than for Customer's internal business purposes.

5. TERM. The Agreement shall be in effect for the Initial Term of Service set forth on Exhibit B, and unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on a month-to-month basis unless either party notifies the other party at least thirty (30) days prior to the expiration of the then-current term of such party's intent not to renew.

6. PAYMENT. Customer agrees to pay TWC the fees (collectively the "Service Charges") set forth on Exhibit B in accordance with the following payment terms. Service Charges will be billed to Customer monthly in accordance with TWC's regular billing schedule and are payable within thirty (30) days after the date of invoice. Customer shall be responsible for all use, sales and other taxes applicable to the Services (which taxes are not included in the Service Charges), except for taxes payable on TWC's net income. TWC shall have the right to increase Service Charges after the Initial Term. TWC may charge a late fee for all overdue amounts. The late fee will be the \$5.00 per period. In addition to the foregoing, and all other available remedies, TWC may discontinue

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Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid. TWC may require a security deposit, letter of credit, advance payment for Services or other reasonable assurances of payment from Customer.

7. PROPRIETARY RIGHTS AND CONFIDENTIALITY. (a) TWC's Proprietary Rights. All materials, including, but not limited to, any software, data or information developed or provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. (b) Customer Content License. Customer hereby grants to TWC a nonexclusive, worldwide, royalty-free license for the term of the Agreement to modify, publish, reproduce, distribute, perform, and otherwise use any content and materials provided by Customer hereunder solely as necessary to provide the Services as contemplated herein. (c) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. TWC shall use reasonable efforts to maintain Customer's information transmitted via the Service in confidence; however, Customer understands and agrees that such information is transmitted over the Internet and that Time Warner Cable cannot guarantee the security of information transmitted over the Internet.

8. SOFTWARE. In order to use the Services, Customer understands and agrees that Customer may be required to download certain software ("Software") made available to Customer via the Portal. TWC grants Customer a limited, non-exclusive and non-transferable license to use such Software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes for the term of this Agreement. Customer shall not, and shall not permit any third party to, copy or otherwise reproduce the Software or modify, translate, reverse engineer, reverse compile or disassemble the Software.

9. MONITORING. TWC shall have the right, but not the obligation, to monitor Customer's use of the Service to ensure Customer's compliance with this Agreement. In the event that TWC's monitoring reveals that Customer's usage of the Service exceeds Customer's rights hereunder, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.

10. MODIFICATIONS. TWC shall have the right, but not the obligation to, to (a) upgrade, modify and enhance the Service through "downloads" from the TWC web site or otherwise; (b) change or discontinue any aspect of the Service, including but not limited to minimum system requirements; and (c) take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of the Terms of Use. TWC will notify Customer of any material adverse change in the Terms of Use by posting notice of such change on the TWC web site or by email. Customer's continued use of the Service after such notice shall constitute Customer's acceptance of such change. If a change or discontinuation of any aspect of the Service has a material adverse impact on Customer's ability to receive the Services hereunder, Customer may terminate its Services account without termination liability.

11. TERMINATION. Either party may terminate this Agreement upon thirty (30) days written notice of the other party's material breach, provided that such material breach is not cured within such thirty (30) day period. In addition, in the event that Customer fails to comply with the applicable laws or regulations, the terms of this Agreement, or the Terms of Use, TWC may suspend or discontinue Customer's Service in whole or in part without advance notice. In the event of a suspension, TWC may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement, (a) TWC's obligations hereunder shall cease; (b) Customer promptly shall pay all amount dues and owing to TWC for Services delivered prior to the date of termination or expiration and any applicable deinstallation fee, if any; and (c) Customer promptly shall cease all use of any Software and shall return such Software to TWC. In addition, notwithstanding anything to the contrary herein, upon termination of this Agreement by TWC prior to the end of the Initial Term or any renewal term due to Customer's material breach, Customer shall, within thirty (30) days after the date of termination, pay TWC a termination fee as set forth in Exhibit B. The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or law relating to Customer's material breach.

12. INDEMNIFICATION. Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys' fees, arising out of or relating to: use of the Service by Customer and its employees, including but not limited to a breach of Section 4 herein; or any content or other materials supplied or transmitted by Customer or its employees, including, but not limited to, any content which infringes or allegedly infringes the proprietary rights of a third party.

13. DISCLAIMER OF WARRANTY. CUSTOMER ACKNOWLEDGES THAT IT IS FAMILIAR WITH THE SERVICES SELECTED HEREUNDER AND THAT STORAGE AND BACKUP SERVICES SUCH AS THOSE PROVIDED UNDER THIS EXHIBIT ARE NOT FOOLPROOF AND, THEREFORE, ARE NOT GUARANTEED. CUSTOMER UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, FITNESS FOR A PARTICULAR PURPOSE OR QUIET ENJOYMENT, OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY, AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER, THE LAWS APPLICABLE TO THIS AGREEMENT. CUSTOMER AGREES THAT ALL USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. IN ADDITION, CUSTOMER UNDERSTANDS AND AGREES THAT TRANSMISSIONS OVER THE INTERNET MAY NOT BE SECURE. CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK

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AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE UPLOADING, DOWNLOAD OR OTHER TRANSMISSION OF SUCH MATERIALS AND/OR DATA.

IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT, AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, QUIET ENJOYMENT OR NON-INFRINGEMENT.

14. LIMITATION OF LIABILITY. IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF TWC TO CUSTOMER FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.

15. NOTIFICATIONS. Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Federal Cable Communications Act (the "Cable Act") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws, is described in the Subscriber Privacy Notice provided by TWC in writing, which is incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation or by the American Registry for Internet Numbers ("ARIN") or any similar agency. In addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, TWC shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. Customer hereby consents to such actions or disclosures.

16. FORCE MAJEURE. TWC shall have no liability to Customer hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the Service, in whole or in part, or act or failure to act of Customer or any third party using the Service.

17. ENTIRE AGREEMENT. This Agreement, including without limitation all exhibits that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the parties with respect hereto. In the event that TWC permits a Customer to use its own standard purchase order form to order Services hereunder, the parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect.

18. MISCELLANEOUS. This Agreement shall be governed and construed in accordance with the laws of the State of New York, excluding its conflicts of law principles. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement, including without limitation, in whole or in part, to any AOL Time Warner Inc. affiliated party without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any TWC affiliate, including without limitation Road Runner HoldCo LLC, as well as by TWC and/or its subcontractors. The parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other party. Notices shall be delivered to Customer and TWC at the respective addresses set forth on the Cover Sheet, or to such other address as is provided by one party to the other in writing. The provisions of Sections 6, 7, 11, 12, 13, 14 and 18 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

CUSTOMER:

By: _____
Name: _____
Title: _____
Date: _____

TWC:

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Services

Service Description:

[TWC TO ADD]

Services Available for Purchase Hereunder:

- Remote backup services
- Storage capacity (purchase options):
 - 100 Megabytes
 - 250 Megabytes
 - 500 Megabytes
 - 1 Gigabyte
 - Additional Gigabytes may be purchased in increments of 1 Gigabyte

[TWC: Please add any other Service features.]

Exhibit B

Prices

STORAGE SPACE	STANDARD SET-UP PRICE (ONE TIME FEE)	MONTHLY RECURRING FEE
100 Megabytes		
250 Megabytes		
500 Megabytes		
1 Gigabyte		
Additional Storage Space (pricing is per Gigabyte)		

Early Termination Fee: _____

Initial Term of Service

- 3 Months
- 6 Months
- 9 Months
- One Year
- Other _____