



Appendix F to DIR Contract No. DIR-TSO-2633 Quasar Data Center Service Agreement

This Service Agreement (the "Agreement") is by and between Quasar Data Center LTD, a Texas Limited Liability Company, located at 1001 Texas Avenue., Suite 310, Houston, Texas, 77002 (hereinafter referred to as "Provider"), and the customer ("Customer "_____"). This Agreement shall commence on the date (the "Effective Date") appearing within the "Customer Acceptance" signature block of the statement of work.

Upon signature by Customer, this Agreement constitutes purchase and acceptance by Customer of the Quasar Data Center. Provider and Customer may hereinafter be referred to collectively as the "Parties", and individually as a "Party".

Whereas, Provider has a background in Virtualization Technologies and is willing to provide its Solutions (as defined herein) to the Customer based on this background, and

Whereas, Customer desires to purchase Provider's Solutions from Provider,

Now therefore, in consideration of the terms and conditions contained herein, the Parties hereby agree as follows:

1. **Description of Products and Services ("Solutions").** Provider shall furnish the products and services ("Solutions") shown under the heading, "Detail", in the Quote Sheet to be provided in Appendix D., Statement of Work, of this Contract.
2. **Term.** The Initial Term ("Initial Term") of this Agreement shall commence on the Effective Date and shall remain in effect for the service period specified in the Statement of Work. Customer may execute, at its option, a new Service Agreement with Provider for a term of twelve (12), twenty-four (24) or thirty-six (36) months. The Agreement may be extended beyond the initial term by mutual written agreement of the parties.
3. **Termination.**
 - a. Customer Termination: Customer may terminate Services at any time with thirty (30) days' written notice, but shall owe to Provider (i) cancellation charges agreed upon in the Statement of Work.
 - b. Customer Termination for Provider Breach: Termination shall be in accordance with Section 9B of Appendix A, DIR Contract No. DIR-TSO-2633.
4. **Termination Liability.** If Customer terminates this Agreement for convenience prior to the fulfillment of the Term, then a termination liability will be due to Provider from Customer. *The Termination Liability shall be one-half (1/2) of the balance due and owing for each month remaining on the Term of the Agreement, with the exception of the last month, the deposit for which as described in Paragraph 8 ("Customer Billing and Payments") shall be forfeited by Customer to Provider.*
5. **Pricing.**
 - a. The prices for the Solutions ordered by the Customer are shown in the Statement of Work. Pricing shall be in accordance with Appendix C, Pricing Index, of DIR Contract No. DIR-TSO-2633. Customer understands and agrees that the quantities shown in the statement of work may change during implementation as described in Paragraph 13, ("Implementation of Solutions"), even though the prices will remain the same.
 - b. All prices are shown, and shall be paid, in U.S. dollars. Provider's charges for the Solutions are not subject to change during the Initial Term except as the result of:
 - i. Mandates by local, state or federal regulatory or taxing authorities; or
 - ii. Changes in the charges for services provided by third parties.

Prior to any change in price, Provider will notify Customer at least 30 days in advance. If Customer does not agree to the price increase, Customer may terminate this agreement without penalty.

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- c. Changes to or relocation of the Solutions if requested by Customer and performed by Provider may result in additional charges to Customer by Provider.
- 7. **Customer Billing and Payments.** The Provider shall invoice Customer for the Solutions as set forth herein. Customer agrees to pay Provider the prices as set forth in the Statement of Work. **Pricing** shall be in accordance with Appendix C, Pricing Index. **Payment** shall be in accordance with Section 6C of Appendix A, DIR Contract No. DIR-TSO-2633.
- 8. **Expenses.** Pricing shall be in accordance with Appendix C, Pricing Index, of DIR Contract No. DIR-TSO-2633. Travel Expense Reimbursement shall be in accordance with Section 4F of DIR Contract No. DIR-TSO-2633.
- 9. **Provider as Independent Contractor.** Provider shall be performing the services hereunder at all times as an independent contractor to Customer, and Provider shall not be considered a joint venture partner with Customer or an employee or agent of Customer.
- 10. **Employees, Agents and Subcontractors.** Provider's employees, agents, and/or subcontractors, if any, who perform services for the Customer under this Agreement shall also be bound by the terms and conditions of this Agreement. At the request of the Customer, Provider shall provide adequate evidence that such persons are Provider's employees, agents, and/or subcontractors.
- 11. **Implementation of Solutions.**
 - a. Customer authorizes Provider to obtain information on Customer's existing services and IT environment and to submit orders on Customer's behalf to third parties as required to provide the Solutions. This authorization may be withdrawn by Customer at any time.
 - b. Provider shall not be required to take any action on Customer's behalf until this Agreement has been executed by the Parties and Customer has paid any deposits as may be required.
- 12. **Service Level Agreement.** Customer and Vendor shall mutually agree upon Service Levels as detailed in Appendix D, Statement of Work.
- 13. **Solutions, Modification of** Quasar Data Center reserves the right to modify, alter, improve, change or discontinue any of the Solutions during the term of this Agreement or any renewal hereof, provided that Quasar Data Center shall continue to provide such Solutions to Customer for the Term of the Agreement. Quasar Data Center shall provide Customer thirty (30) days' written notice via e-mail prior to discontinuing any of the Solutions. In the event the Federal Communications Commission (FCC), Congress, a state legislature, or any official body (such as a utilities commission or a court of competent jurisdiction) issues a rule, regulation, law or order that has the effect of modifying, discontinuing, or increasing the cost to provide any product or service hereunder or canceling, changing or superseding any material term or provision of this Agreement (each a "Regulatory Requirement"), then this Agreement shall be modified in such a way as the Parties mutually agree is consistent with the form, intent, and purpose of this Agreement and is necessary to comply with the Regulatory Requirement immediately after the Regulatory Requirement is effective. In the event the Parties fail to agree, then upon written notice either Party may, terminate that portion of this Agreement impacted by such Regulatory Requirement.
- 14. **Client-owned Application Licenses: Disclaimer.** Customer must agree to use its own license(s) of the respective software being used in conjunction with the Solutions. Quasar Data Center, does not provide technical support for any software made by companies other than Quasar Data Center or as otherwise set forth in this Agreement. Logos of other companies belong to their respective owners, and Quasar Data Center Inc. does not claim any partnership or association with them unless otherwise stated.
- 15. **Intellectual Property.** Intellectual Property shall include, but not be limited to, software programs, programming code, copyrightable works, ideas, discoveries, inventions, applications for patents, and patents. Any (a) Intellectual Property, (b)

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improvements to Intellectual Property and (c) any uses of Intellectual Property or concepts related to Intellectual Property that are discovered or developed by the customer or by Provider when working for the customer shall be and remain the exclusive intellectual property of the customer and shall not be disclosed to any third party outside the customer. A violation of this paragraph shall be a material violation of this Agreement.

16. **Confidentiality.** Provider recognizes that the customer has and will have various forms of confidential and proprietary information (collectively "Information") which are valuable, special and unique assets of the customer and need to be protected from improper disclosure. Such Information shall include, but not be limited to, the following:

All Information of any nature or kind, written or verbal, owned or possessed by the customer including, but not limited to, Information pertaining to (a) customer trade secrets, processes, systems, client reporting methods, software programs, customers, clients or referral sources, lists of data, business information, supplies, manuals or reports used by, licensed to, owned or used by customer, (b) financial data and reports, marketing plans and/or business plans or data that relate to actual or anticipated business of customer or its actual or anticipated areas of research and development, and (c) evaluations of and the use or non-use by customer of systems, software programs, and any additional information obtained through the course of Provider's relationship with customer that is designated by customer as "confidential" or that customer indicates through its policies, procedures or other instructions should not be disclosed to anyone outside customer, except through controlled means.

Provider agrees that Provider will not at any time or in any manner, either directly or indirectly, use any Information for Provider's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of the customer. Provider will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

17. **Confidentiality after Termination.** The confidentiality provisions of this Agreement shall remain in full force and effect indefinitely after the termination of this Agreement.
18. **Return of Records.** Upon termination of this Agreement, Provider shall deliver all records, notes, data, memoranda, models, software programs, programming code, and equipment of any nature including digital or electronically stored, that are in Provider's possession or under Provider's control and that are the customer's property or relate to the customer's business.
19. **Force Majeure.** Force Majeure shall be in accordance with Section 9C of Appendix A, DIR Contract No. DIR-TSO-2633.
20. **Warranties.** PROVIDER WARRANTS THAT ALL SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER, CONSISTENT WITH INDUSTRY STANDARDS. OTHERWISE, PROVIDER MAKES NO WARRANTIES WITH RESPECT TO THE SERVICES OR ITS PERFORMANCE HEREUNDER AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, ORIGINALITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AS WELL AS ANY WARRANTIES WITH RESPECT TO RESULTS TO BE DERIVED FROM THE USE OF ANY HARDWARE, SOFTWARE OR OTHER ITEMS PROVIDED UNDER OR IN CONNECTION WITH THE SERVICES PROVIDED. TO THE EXTENT THAT PROVIDER MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED OR STATUTORY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.
21. **Indemnification** shall be in accordance with Section 8A of Appendix A, DIR Contract No. DIR-TSO-2633.
22. **Limitation of Liability** shall be in accordance with Section 8K of Appendix A, DIR Contract No. DIR-TSO-2633.
23. **Limited Authority.** Neither party may assign or transfer its obligations under this Agreement without the other's prior written consent, which shall not be unreasonably withheld.
24. **Notices.** Except as stipulated elsewhere in this Agreement, all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when sent **(a)** in person, **(b)** three (3) days after being deposited in the USPS mail

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(postage prepaid), (c) via facsimile (with confirmation of delivery), (d) one (1) day after being delivered to a nationally-recognized overnight courier service, or (e) delivered as e-mail to the recipient's e-mail server, addressed as follows:

If for Customer:

If for Provider:

Legal Department

Quasar Data Center
1001 Texas Avenue, Suite 310, Houston, TX 77002
Houston, Texas 77242-1087

Such addresses may be changed from time to time by either Party by providing written notice to the other in the manner set forth above.

- 25. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 26. **Amendment.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both Parties.
- 27. **Waiver of Contractual Right.** The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 28. **Applicable Law.** The laws of the State of Texas shall govern the construction and interpretation of this agreement. Exclusive venue for all actions will be in state court, Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.
- 29. **Entire Agreement.** DIR Contract No. DIR-TSO-2633 and this Agreement contain the entire agreement of the Parties and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties. In the event of a conflict, the DIR Contract controls.

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IN WITNESS WHEREOF, the Parties hereto all acknowledge that they have fully reviewed the foregoing Agreement and have had the opportunity to seek the advice of legal counsel with respect to any issues that arose in conjunction with such review. The person(s) whose signature(s) appear in the "Customer Acceptance" signature block of the statement of work of this Agreement affirm they have the authority to bind Customer to the terms herein on behalf of the Customer.

QUASAR DATA CENTER LTD.:

By: _____

Title: _____

Printed Name: _____

Date: _____

CUSTOMER:

By: _____

Title: _____

Printed Name: _____

Date: _____

Initials: _____