

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this “**MSA**”) by and between Qu Data Centres Limited Partnership, acting by its general partner Qu Data Centres GP Ltd. (the “**Company**”) and the “**Customer**” of the Services identified on a Service Order (a/k/a Order) that is executed by the parties thereto. Such Service Order, including the Services arising thereunder is subject to the terms and conditions of this MSA, including the other documents that form part of the Agreement (as this term is defined herein). In the Agreement, the Company and the Customer may be collectively referred to herein as the “**Parties**” or individually as a “**Party**.”

In consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

1. GENERAL

- 1.1. **Terms of Agreement:** The Agreement sets forth the roles and responsibilities of the Parties regarding the Service identified in the Service Order(s). By using, accessing and/or reselling the Services, the Customer agrees to be bound by all the terms and conditions of the Agreement. The Customer shall reasonably cause the Users to comply the terms of this Agreement applicable to accessing, using and/or reselling any part of the Services. The “**Agreement**” consists of the documents listed below in this Section, together with any additional written amendments to the Agreement that are executed by the Parties (which shall take precedence). To the extent that the Customer issues its purchase order(s) or other like documents in connection with ordering Services, such documents shall serve the Customers’ internal recording keeping purpose only, and any terms thereon shall not have any force or effect over the terms of the Agreement, including provisions of the Services, and shall not be binding on the Parties. Unless otherwise agreed to in writing, in the event of a conflict or inconsistency between the documents forming the component parts of the Agreement, such documents will follow the order of precedence outlined below:

- (a) Service Order (also referred to as the Order);
- (b) this MSA;
- (c) Product Terms applicable to the Services;
- (d) Service Documentation applicable to the Services (if any); and
- (e) Acceptable Use Policy.

- 1.2. **Interpretation:** In the Agreement:

- (a) headings are for reference only and do not affect the scope or meaning of the Agreement;
- (b) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies and corporations;
- (c) “including” means including without limitation;
- (d) the singular includes the plural and vice-versa;
- (e) reference to a day or month means a calendar day or month, unless expressly stated otherwise; and
- (f) unless otherwise expressly stated in an applicable Service Order or statement of work, all money amounts referenced in the Agreement are stated in Canadian currency, and are

exclusive of applicable taxes, such as excise, sales, use, value added or other taxes, tariffs or duties that may be applicable to the Services.

1.3 **Definitions:** Unless otherwise expressly defined elsewhere in the Agreement, capitalized terms referenced therein shall have the following meanings:

“Acceptable Use Policy” or **“AUP”** means Company’s Acceptable Use Policy found on the Website.

“Business Day” means any day other than Saturday, Sunday or other day on which bank branches of financial institutes listed under Schedule 1 of Canada’s *Bank Act* (SC 1991, c.46) are authorized or required by law to remain closed in the province of Ontario.

“Commencement Date” means the date that the Services are made available for the Customer’s use which is typically the estimated Commencement Date (or Term Start Date) set forth in the Services Order.

“Confidential Information” means all non-public information disclosed by a Party (**“Disclosing Party”**) to the other (**“Receiving Party”**) in connection with the Agreement that the Receiving Party ought to have reasonably identified as being the confidential in nature. Confidential Information includes any information of the Disclosing Party relating to unpublished pricing information, terms of the Services, audit reports, compliance and certification reports, security reports, product development plans, financial information, data center designs, server configuration, technical specifications, methodology, customers, and other proprietary information, including trade secrets.

“Customer Data” or **“Content”** means collectively any data of the Customer and/or its Users that passes through, is processed on or is stored on any part of the Services.

“EFT” means Electronic Fund Transfer, also known as Direct Debit or BACS payment.

“Fees” or **“Fee”** as used in the context means the money amounts payable by the Customer to Company for the provision of Services hereunder.

“MRC” or **“Monthly Recurring Charges”** means the minimum monthly Fees for Services (exclusive of applicable taxes, such as taxes based on sales, use and consumption) set forth in a Service Order that re-occurs monthly during the Term. Additional Fees may apply for Overage.

“NRC” or **“Non-recurring Charges”** means the Fees (exclusive of applicable sales/consumption taxes) set forth in a Service Order that does not re-occur monthly during the Term; these are typically one time Fees charged to the Customer in connection with the initiation/set-up of the Services.

“Order” *See Service Order definition*

“Term” means the either the Initial Term or any Renewal Term (as these terms are defined below);

“Third Party Product(s)” means the product(s) and/or service(s) of third-parties that form part of the Services.

“Product Terms” form part of the Agreement and means the specific terms applicable to particular Services, and may contain the SLA (as this term is defined below) in connection therewith; a copy of which is located on the Website.

“Service Documentation” (also referred to as Service Guide) means any service document and/or technical description document that relates to particular.

“**Service Level Agreement**” or “**SLA**” means the standard of the performance terms for a particular Service set forth in the applicable Product Terms; and includes the metrics used to measure such standard, and the applicable warranty (i.e.: service credits) regime that serves as the Customer’s exclusive remedy if the applicable standard of performance is not met.

“**Service Order**” (also referred to herein as “**Order**”) means either an electronic order for Services the Customer submits to Company via the Company’s online ordering portal, or any other written order for Services (either in electronic or paper form) that is executed by the Parties that sets forth, among other things, the specific Services the Customer is purchasing from Company and Term of such Services.

“**Service(s)**” means the service(s) that are identified on a Service Order that is provisioned by, or on behalf of the Company for the Customer. The Services may be described in greater detail in the applicable Product Terms and/or Service Documentation (if any).

“**Service Impact**” means that the Company is unable to maintain the standard of performance for a particular Service in accordance with the applicable Service Level Agreement.

“**Users**” means Customer, or any third-party who the Customer permits to access, use and/or resell any part of the Services; such third-party may include the Customer’s employees, contractors, agents, customers and/or the Customer’s reseller of the Services.

“**Website**” means the Company website, currently available at <https://qudatacentres.com/legal>.

2. **TERM AND TERMINATION**

2.1. **Term of this MSA:** The term of this MSA shall commence as of the Effective Date and continue until the expiration of the Term of the last remaining Service Order or until terminated in accordance with clause 2.2 below.

2.2. **Termination:** The Agreement, Service Order(s) and/or a particular Service(s) may be terminated in one of the following ways:

- (a) by either Party, if the other Party commits a material breach or fails to perform any obligations under the Agreement, and has not remedied the breach within thirty (30) days after receipt of a notice from the non-breaching Party identifying the breach or failure;
- (b) by Company if the Customer ceases to carry on business as a going concern, becomes insolvent, commits an act of bankruptcy, becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation as reasonably determined by the Company, or if a receiver or similar officer is appointed with respect to the whole or a substantial part of the Customer’s assets, or an event similar to any of the foregoing occurs under applicable law;
- (c) by Company for any reason by providing the Customer with not less than sixty (60) days prior written notice, and to the extent that the Customer pre-paid the Fees to Company, Company shall refund the Customer any remaining amount of such Fees that have not been applied to the affected Services after the effective termination date thereof; or
- (d) as otherwise provided in the Agreement.

2.3. **Service Orders:** Each Order shall state the Customer’s committed initial term of the Services starting from the Commencement Date (“**Initial Term**”); if the Initial Term is not expressly stated in the Service Order, the Initial Term of the Services shall be deemed to be for a period of twelve (12) months from the Commencement Date. Unless a Party notifies the other Party of its intention not to renew the Services at least sixty (60) days prior the end of the Initial Term or any renewal

Term thereof, the Services shall automatically renew for subsequent twelve (12) month periods (“**Renewal Term**”) under the same terms and conditions except that the Fees may be adjusted to reflect Company’s then current pricing for the Services.

- 2.4. Cancellation of any Order or a particular Service prior to the expiration of the Term must be made by way of a written cancellation request submitted to the Company in accordance with the notice provision set forth herein or through a service ticket raised by the Customer through the Company’s online ticketing service portal; to the extent that the Customer’s cancellation request is made by any other means, such cancellation request shall not be binding on the Company until the Company acknowledges in writing of its receipt and confirms to the Customer the cancellation date of the Order or a particular Service.
- 2.5. To the extent the Company supplied any equipment to the Customer as part of the Services, the Customer shall return such equipment to the Company at its expense upon the termination of the Services or pay the Company the fair market value therefor.

3. **CUSTOMER OBLIGATIONS**

3.1. Customer agrees:

- (a) that Users will use the Services in accordance with the Agreement and all applicable laws, and that the will Customer remains responsible for the use of and access to the Services by Users and for reasonably causing Users’ compliance with the applicable terms hereunder relating to their access, use and/or reselling of the Services;
- (b) to comply with the Company policies and guidelines relating to the Services are made available to the Customer;
- (c) to reasonably cooperate with Company’s investigations of Service Impact, security matters and any suspected breach of the Agreement;
- (d) to without delay notify Company of any unauthorized access to or use of the Services, any other breach or suspected breach of the security of the Services that Customer becomes aware of;
- (e) to pay all undisputed Fees and applicable taxes in accordance with the terms of the Agreement; and
- (f) to reasonably cooperate with Company to determine any tax-exempt status applicable to the Customer.

3.2. **Customer Requirements:** It is Customer’s responsibility to assess whether the Services are appropriate and suitable for the Users’ requirements. Where Company provides advice about the Services that may apply to the Customer’s or its User’s requirements, or the configuration of any equipment used by them in connection the Services, such advice is given on the basis of a good faith recommendation using reasonable skill and care, but without any guarantee or warranty of accuracy, adequacy, suitability, functionality or performance of such recommendation.

3.3. **Monitoring User Activity:** Users voluntarily engage in the use of the internet and are responsible for the risks associated therewith, including such uses to access the Services. The Company is under no obligation to manage or monitor the Users’ use of the Services. In all respects, the Customer shall remain responsible for Customer Data.

- 3.4. **Indemnity for Third Party Claims:** Customer shall defend, indemnify and hold harmless Company, its parent company, and their affiliates, subsidiaries, employees and representatives, jointly and severally, from and against any and all third party claims for damages, losses, liability, causes of action, judgments, costs or expenses (including reasonable legal fees) directly or indirectly arising from any User's access to, inability to access or use of the Services, as well as any unauthorized access to the Services by any third party through any User's information technology system however caused and claims relating to infringement of third-party's intellectual property in connection with any User's use of the Services.
- 3.5. **Add-on Components:** Services may include non-core add-on components, such as back-up/disaster recovery and firewall service ("**Add-on Component/s**"). Add-on Components are provisioned for the Customer only if expressly agreed to in writing by the Parties or if expressly set forth on an Order. When an Add-on Component is provisioned for the Customer, the specific parameters of the scope and applicability of each Add-on Component ("**Add-on Component Parameter**") may be set forth in an applicable Order, ticket or another written document agreed to, or established by the Parties. For example, in the case of back-up/disaster recovery, such document will set out the details as to what needs to be backed-up and the backup frequency. It shall be the Customer's responsibility to instruct Company in writing as to the specific details of the Add-on Component Parameters, including any updates thereto from time to time. In the absence of such detail, Company may, but is not obligated to set-up each Add-on Component and/or Add-on Component Parameter in accordance with its standard practices.
- 3.6. **Remote Hands:** Subject to the Customer's request and availability of Company personnel, the Company may make available personnel who will provide technical or non-technical support and assistance related to the Services ("**Remote Hands**"). Unless otherwise agreed to in writing by the Parties, Fees for Remote Hands are charged to the Customer on an hourly basis, with a one (1) hour minimum at the Company's then current hourly rate for Remote Hands; and response times for performance of Remote Hands will be based on commercial reasonable efforts. Remote Hands will only be performed upon request and direction of the Customer. The Company shall not be responsible or liable in any way for consequences arising from such performance.
- 3.7. **Penetration Tests.** The Customer shall not conduct or permit any security penetration tests on the Services without the prior written approval of the Company. To the extent such tests are conducted by or on behalf of the Customer without the prior written approval of the Company, the Company may, without liability of any kind to any User, restrict access to the Services or part thereof and invoice the Customer additional Fees for costs and expenses incurred by the Company in connection with such unauthorized tests.
4. **FEES AND PAYMENT TERMS**
- 4.1. **When Customer's Fees are Due:** Unless otherwise agreed to in writing by the Parties, Fees shall be payable by the Customer within thirty (30) days after the Customer's receipt of an invoice from the Company. The Customer shall be invoiced for the Services monthly in advance (the first month's charges shall be pro-rated to the number of days of service for the first month); furthermore and to the extent applicable, portion of the Fees incurred in a monthly period based on actual consumption of the Services that are in excess of the MRC set forth in the Service Order (e.g.: Overage) shall be charged to the Customer in arrears in the following month's invoice.
- 4.2. **Late Payment:** Without prejudice to the right of Company to receive payment when due, Company may assess a late payment charge of 1.5% per month or fraction of a month (equivalent to 19.56 % per annum) on the unpaid and undisputed balance of any amount due hereunder. Any amount that is

disputed by the Customer that is later determined to be correct shall also be subject to such late payment charge.

- 4.3. **No set-off or abatement:** The right of Company to any payment provided for under the Agreement shall not be subject to any abatement, reduction, set off, defense, counterclaim or recoupment by reason of any past, present or future claims of the Customer.
- 4.4. **Collection costs:** Customer will be responsible for any expenses and costs the Company reasonably incurs in connection with enforcing collection of any Fees or other money amounts payable by the Customer under the Agreement, including reasonable legal fees, court costs and/or collection agency fees.
- 4.5. **Payment of Fees:**
 - (a) If the Customer pays any amount arising hereunder by credit card, where permitted at law, 2.4% percentage of such amount may be included in the Customer's following month's invoice as a credit card processing surcharge in connection with the Customer's credit card payment made for the previous month's invoice; and when applied, credit card processing surcharge will form part of the Fees, and will be in addition to the monthly Fees for Services.
 - (b) If the Customer pays any amount arising hereunder by electronic fund transfer (EFT) or wire transfer, amount of the fees associated therewith incurred by the Company (each a "**Transfer Payment Surcharge**") will be included in the Customer's following month's invoice. Transfer Payment Surcharge form part of the Fees and are in addition to the monthly Fees for Services.
 - (c) If the Customer wants to avoid credit card processing surcharge or Transfer Payment Surcharge, it may pay amounts hereunder by cheque.
 - (d) Customer agrees that Customer will immediately notify Company of any changes to Customer's payment information, such as credit card information, the Customer's billing contact information or any other information the Company may reasonably require in order to process Customer's payments according to the terms herein.
 - (e) Customer shall pay the Fees when due. The Customer shall provide written notice to the Company if the Fees invoiced (or portion thereof) are disputed. Such notice will contain sufficient and accurate particulars to enable Company to assess the extent and the urgency of the payment dispute. To the extent that the Customer does not dispute invoiced Fees in accordance with the foregoing in this Section within thirty (30) days after the invoice date, the invoice amount of the Fees shall be deemed to be accurate and fully accepted by the Customer.
- 4.6. **Overage Fees:** If applicable to the Services and in the event that the Customer's usage of the Services in any monthly billing period exceed the usage allotment set forth in the applicable Service Order ("**Overage**"), including the usage allotment of electrical power, network bandwidth, the number of subscriptions (e.g.: licenses) and/or the allotment of any third-party products/services (each an "**Overage Product**"), monthly invoices issued by the Company to the Customer shall be adjusted accordingly in to reflect the Overage (i) in accordance with the unit price of Overage Product as expressly set forth in the Service Order; or (ii) if the unit price of the Overage Product is not expressly set forth in the Service Order, then in accordance with Company's then current unit price of such Overage Product.
- 4.7. **Suspension:** (a) To the extent that the Customer disputes any portion of the Fees, the Customer shall work in good faith with Company to resolve the matter expeditiously; the payment of any

undisputed portion of the Fees shall not be impacted in any way by such dispute. (b) In addition to other rights hereunder and at law, upon reasonable efforts to collect overdue undisputed Fees from the Customer and written notice to the Customer, the Company may suspend Customer's account and any active Service until such overdue undisputed Fees are paid in full.

4.8. **Early Termination:**

(a) Service Order. To the extent that the Customer terminates any Service subject to a Service Order prior to the expiration of the applicable Term therefor for reason(s) unrelated to a breach of the Agreement by the Company, the Customer shall be invoiced for, and shall be liable to pay Company an amount equal to the aggregate amount of the Fees that would have been payable during the remainder of the Term; however, to the extent that the Fees are not expressly stated in the applicable Service Order for any reason, for purposes of the foregoing in this Section, the monthly Fees applicable to the affected Services shall be deemed to be either (i) the average of the monthly Fees paid by the Customer over a twelve (12) month period immediately preceding the effective date of such termination, or (ii) if the affected Services were provisioned for a period that is less than twelve (12) months, then the average of the monthly Fees paid by the Customer for the affected Services prior to the effective termination date therefor. To the extent that such termination is for a portion of the Services under a Service Order, then in addition to the foregoing in this subsection, any discounts that were applied to the Fees under the affected Service Order may be removed from the remaining Services for the remainder of the Term.

(b) SOW. To the extent that the Customer terminates the Services arising from an executed statement of work (a/k/a scope of work) that forms part of the Product Terms for professional services at any time prior to the completion of such Services, the Customer shall be invoiced for, and shall remain liable to pay the Company the Fees set forth in such statement of work.

(c) Third Party Costs. In addition to the applicable above foregoing termination charge, the Customer shall pay the Company an amount equal to the aggregate third party costs which the Company is liable to continue to pay for the remainder of the Term of the terminated Service (e.g.: connectivity services, hardware rental, licensing fees, etc.).

(d) Liquidated Damages. The Customer acknowledges and agrees that the above foregoing charges relating to the Customer's early termination of Services are a pre-estimation of the damage to be suffered by the Company resulting therefrom and are not a penalty. The Customer expressly waives the application of article 2125 of the *Civil Code* of Québec, if applicable.

4.9. **Credit check:** Credit facility, if any, is offered at Company's discretion and is subject to being revoked on notice in the event of late payment. For purposes of considering a credit facility or to maintain a credit facility for the Customer, the Customer authorizes Company or its Affiliates to disclose, share and/or exchange information that they have concerning the Customer with credit verification service providers for the purpose of assessing the Customer's on-going credit worthiness.

4.10. **Fee Increases:** The Company may increase the Fees:

- (a) at any time during the Term in order to pass through an increase in the cost (including the imposition of surcharges, levies or tariffs of any kind) of third-party services and/or products necessary for the provisioning of the Services, such as utility services (e.g.: electrical power), software licensing and leasing costs;
- (b) on an annual basis, but not before the first anniversary of the first day of the Term, to reflect an increase in the Consumer Price Index, as published by the applicable government agency,

whereby the Fees may be increased by the greater of (i) the same percentage as the increase in the Consumer Price Index or (ii) three percent (3%); and

- (c) to the extent applicable, pass through any increase in the cost of any third-party products or services that was pre-approved by the Customer, and is used solely for the provision of the Services for the Customer,

provided that in any case Company has notified the Customer not less than sixty (60) days in advance of such increase, except where Company itself has received less than sixty (60) days advance notice, in which case the Company shall give the Customer reasonable amount of advance notice under the circumstances.

- 4.11. The Fees specified on the applicable Service Order are exclusive of, and may be increased as a result of, the imposition by any relevant authority of any tax, impost, duty, levy, charge or any measure of equivalent effect to any of the foregoing including but not limited to any 'green levy' such as the carbon tax and the climate change levy, import/export duties or shipping and delivery charges applicable to the Services.
- 4.12. If Company, during an investigation or trouble shooting of any issue related to the Services, determines in its reasonable opinion that the issue is directly or indirectly caused by the Customer or relates to a product and/or service used by or in connection with the Customer that is not included with the Services or otherwise not attributable to the Company, then Company reserves the right to pause work on the issue until the Customer has agreed to pay the additional costs relating to any associated engineering time or other costs to remedy such issue. Such costs shall form part of the Fees.

5. COMPANY RESPONSIBILITIES

- 5.1. **Product Terms:** Company will provide the Services, including the support therefor as specified in the applicable Product Terms. Parties agree that such Product Terms sets forth the exclusive warranty terms for the Company's failure to provision the Services in accordance with the standard of performance terms therein.

5.2. Security:

- (a) Company will maintain the physical security of its facilities from where the Services are provisioned, including the equipment and information technology systems therein in accordance with reasonable industry standards. Users' access control (including the safety of all passwords and ensuring that the contact information of the Customer's technical representative maintained by the Company is at all times up-to-date and the appropriate use of encryption technology to prevent unauthorized viewing of data) is the Customer's responsibility. The Customer acknowledges and agrees that in the event any device of the Customer or the Services appears to be involved in a computerized network system attacks or is used to gain access to the Company's information technology system that is generally not made available to third parties, the Company shall be entitled to respond as it determines appropriate, including blocking or suspending the Services.
- (b) Company reserves the right to suspend, terminate or change in whole or in part the Services, including, without limitation the use of or access to any Company equipment and facility, if such actions are necessary to protect the Company's personnel, customers, facilities, equipment, infrastructure, networks, any operations of the Company or the public from damages or injury of any kind, or to conform to any applicable laws, regulations or standards. In this event, Company will endeavour to notify the Customer as soon as practicably as possible.

- 5.3. **Customer Data:** Company does not have access to, does not have any control over and does not monitor the type, nature or value of the Customer Data. The Customer shall be solely responsible for implementing security measures that are commensurate to the importance and sensitivity of the Customer Data, including (a) frequently backing up Customer Data on a regular basis; (b) configuring and maintaining system redundancies, including geo-redundancy; (c) encrypting Customer Data stored on, received by or transmitted through the Services; (d) installing and maintaining software on its information technology systems, and if applicable on the Services to prevent unauthorized access, infection by viruses and malware; and (e) controlling who has access to its information technology systems that connect to the Services. Despite anything to the contrary in the Agreement, Company shall not be liable to Users for damages any of them may suffer as a result of the Customer failing to comply with the foregoing in this Section. The following provisions explain how Company operates and the Customer's responsibilities:
- (a) **Regulatory Requirements:** Customer is responsible for understanding the regulatory requirements applicable to Customer's business and selecting appropriate Services that meet Customer's requirements.
 - (b) **Data Retention/Server Reclaim:** Unless otherwise expressly agreed to by the Parties in writing, the Company will remove and permanently delete any data that was subject to the Services upon the termination of such Services for any reason in accordance with the Company's internal procedures. It is therefore the Customer's responsibility to retain a copy of the data subject to the Services prior to its termination, including, where applicable, repossessing any of the Customer's devices that may be located on any Company premises.
 - (c) **Data Recovery Losses:** Certain Services contain features that may help to minimize and/or mitigate the risk of data loss; however, this is not a guarantee and the Customer is still required to implement operational measures appropriate to its needs to safeguard against data loss including defining and checking the regularity and success of its data back-ups.
 - (d) **Privacy:** The Company handles personal information of individuals in accordance with the Privacy Policy updated from time to time on its Website.
- 5.4. **Interruption of Services:** Company is not an insurance company for the Customer. Except as otherwise expressly stated elsewhere in the Agreement, the Company does not guarantee the (i) performance of the Services (ii) access to any Service will be uninterrupted or completely error-free; (iii) that defects can or will be corrected; or (iv) that any Services will be completely secure. Customer agrees that except as provided in the Agreement, Company will not be liable to Customer, its other Users or any other third party for any Service Impact, temporary delay or any interruption of the Services. It is the Customer's responsibility to assess the appropriateness of the Services for its operations, including the level of criticality of the Services thereto; and depending of such criticality, reasonably implement measures to mitigate the effects of any Service Impact, such as, but not limited to maintaining appropriate insurance coverage and purchasing failover redundant services, including geo-redundancy and diversity of telecommunication carriers.
- 5.5. **End of Life Support:** When a necessary component of the Services, including hardware, software, licensing, etc. (each a "**Service Component**") is for any reason no longer supported (including software updates and patching) by Company or the applicable third-party supplier therefor (the "**Supplier**"), or the Supplier discontinues or adversely alters the program or policy under which it makes a Service Component available to the Company, the Company will identify that Service Component to the Customer as being "End-of-Life" (each, an "**EOL Product**"). Once the Customer has been notified by Company in writing of the EOL Product ("**EOL Product Notice**"), Company may, at its discretion do the following:

- (a) If the EOL Product is used by Company in the provisioning of the Services, the Company may (i) discontinue the Service or affected part thereof upon thirty (30) days written notice to the Customer; or (ii) replace the EOL Product with an alternative Service Component and pass-through to the Customer any associated cost increase therefor as a one-time Fee or as an increase to the monthly Fees of the Services for the remainder of the Term. Prior to the effective date on which the EOL Product is replaced with an alternative Service Component, the Customer shall fully back-up its data, system configurations and applications that are subject to the EOL Product so that such data, system configurations and applications may be fully restored on an alternative Service Component.
- (b) After the EOL Product Notice to the Customer, Company, in its sole discretion may elect not to replace the EOL Product with an alternative Service Component based on the Customer's request. In this event, (i) Company may only be able to provide limited support with respect to the EOL Product, and to the extent that such support is provided, it will be done so on an "*as-is, where-it-is*" basis without warranty of any kind; (ii) Company will not be liable to Customer or any other User for any loss or damage that may be suffered by them from any impact to the Services arising in connection with the EOL Product; and (iii) Company may increase the monthly Fees for the remainder of the Term for the Services associated with the EOL Product.
- (c) If the EOL Product is owned and/or operated by Customer in connection with the Service, Company may require the Customer to replace EOL Product within thirty (30) days after the EOL Product Notice is received by the Customer or as otherwise agreed to the Parties in writing. After the date the EOL Product Notice is provided to the Customer and for any duration thereafter that such EOL Product continues to be used by the Customer in connection with the Services for any reason, (i) Company's Service Level Agreements and performance guarantees will cease to apply to the Service; (ii) Company may only be able to provide limited support with respect to the EOL Product and to the extent that such support is provided, it will be done so on an "*as-is, where-it-is*" basis and without warranty of any kind; (iii) Company will not be liable to Customer or any other User for any loss or damage that may be suffered from any impact to the Services arising in connection with the EOL Product even if Company consented to the Customer's continued use of such EOL product; and (iv) Company may increase the monthly Fees for the remainder of the Term for the Services associated with the EOL Product.
- 5.6 **Insurance:** Except as expressly set forth in applicable Product Terms, each Party will procure and maintain insurance coverage that it determines is commensurate with its potential damages and liabilities that may arise under the Agreement. The Customer agrees that insurance covering actual losses to the Customer's business, including losses arising from interruption to its business caused by Service issues or cybercrime affecting the Services are the Customer's responsibility. The Parties acknowledge and agree that the insurance coverage maintained by a Party is for the benefit of that Party and not the other Party.
- 5.7 **Scheduled Maintenance:** In order to maintain a high level standard of performance for the Services for all customers, Company Services are subject to periods of scheduled maintenance; and Company will use commercially reasonable efforts to notify the Customer five (5) days in advance of any such maintenance or as otherwise specified in the applicable Product Terms ("**Scheduled Maintenance**"). Notice of scheduled maintenance will be provided to the Customer via an e-mail to email address of the Customer maintained in the Company's records; and for this purpose, the Customer shall ensure that such records are at all times up to date with the Customer's most current contact information. Scheduled Maintenance does not constitute Service Impact and therefore are not qualified for service credit under an SLA.

- 5.8 **Emergency Maintenance:** In the event of emergency maintenance (including where a change is required to address a safety issue, security vulnerability, ensure stability, avoid service interruption or the restoration of the Services), the Company will reasonably endeavor to notify the Customer in advance; however, depending on the severity of the event giving rise to the emergency maintenance, such advance notice may not be reasonably possible (“**Emergency Maintenance**”). Emergency maintenance does not constitute Service Impact and therefore are not qualified for service credit under the SLA.
- 5.9 **IP Addresses:** Customer shall have no right, title or interest in or to any network address or identifier (such IP addresses and host names) (“**Identifier**”) assigned to the Services as part of those Services, and that the use and/or the allocation of the Identifier may be changed by a third-party Identifier allocation authority at any time. Company may, on reasonable notice to the Customer, change or remove the Identifier; and Company is not obligated to notify any other party of such change or removal.
- 5.10 **Relocation:** Unless otherwise agreed to in writing (e.g.: set out in the Service Order), the Services may be relocated and provisioned from any data centre the Company operates or different locations within such data centres. To the extent that such relocation is anticipated to reasonably impact the Customer’s access to or use of the Services, Company will provide the Customer with reasonable prior notice, and cooperatively and reasonably work with the Customer to minimize such impact.

6 SERVICE CREDIT

Where an SLA is provided for a particular Service, the Customer’s entitlement to a service credit for Service Impact shall be in accordance with the terms and conditions of such SLA. Notwithstanding anything elsewhere in the Agreement to the contrary, the Customer shall be disqualified from receiving any service credit if the Customer’s account in respect of Fees is not current and up to date. The Company reserves it right to update the terms of the SLA for a particular Service from time to time to reflect the changes to the business conditions, technology improvements and changes to that Service.

7 CONFIDENTIALITY

- 7.1 Any Confidential Information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Recipient**”) in connection with the Agreement will be protected and held in confidence by the Recipient. Customer and Company agree that Confidential Information will be used only for the purposes of the Agreement and related internal administrative purposes.
- 7.2 Disclosure of Confidential Information will be restricted to the Recipient’s employees, contractors, affiliates or agents (including auditors, lawyers and consultants) on a “need to know” basis in connection with the Services, each of whom are bound by confidentiality obligations no less stringent than these prior to such disclosure. Each Party may disclose Confidential Information relating to the Services to providers of goods and services to the extent such disclosure is necessary and reasonably anticipated.
- 7.3 A Recipient may disclose Confidential Information to the extent required by law, but the disclosure does not relieve the Recipient of its confidentiality obligations with respect to any other Party.
- 7.4 Customer agrees that any audit, compliance, certification or security reports provided to Customer by Company are for Customer’s internal use only and are not to be disclosed or distributed by

Customer to any third party. The Customer agrees that the terms of a Service Order constitutes Confidential Information of Company, and Customer will maintain strict confidentiality thereof.

8 RESELLING THE SERVICES

Customer may resell the Services to third parties, provided always that the Customer's reselling of the Services will not create a relationship of any kind between the Company and any other person, nor will any other person be entitled to exercise any rights or remedies under the Agreement. Customer will be responsible for the use of the Services by other Users as if the Customer were using the Services directly; and the use of the Services by any User is subject to (and Customer will be solely responsible for any breach of) the AUP. The Customer shall cause its Users to comply with the applicable terms of the Agreement, including the AUP relating to access and use of the Services and licensing terms applicable to any part of the Services.

9 BRANDED PRODUCTS

9.1 **Hardware and Software:** The Customer acknowledges that Company does not manufacture the hardware, and in most cases, does not develop the software components that form part of the Services (the "**Branded Products**"). With respect to Branded Products, the Company does not make any independent representations or warranties regarding either fitness for any particular purpose, nor any standard or quality. Except as expressly set forth in the Agreement, the Branded Products, including all information and content made available by Company in respect thereto are provided on an "*as is*" or "*as available*" basis. This Section does not affect Customer's rights under any applicable SLA.

9.2 **Liability for Defects:** Company is dependent on manufacturers and developers of the Branded Products for updates and patches, including security patches, and will have no liability to Customer, its Users or any third party with respect to security vulnerabilities inherent in the applicable Branded Products.

9.3 **End User License Terms:** Customer agrees:

- (a) that Customer will not (i) copy any license keys or otherwise decrypt or circumvent any license keys with respect to the Branded Products; (ii) run Branded Products on a second system or through any other hosting provider; (iii) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on or during the use of any Branded Product; or (iv) reverse engineer, decompile, or disassemble any Branded Product, except to the extent such activity is expressly permitted by the manufacturer or developer of the Branded Products or applicable law;
- (b) to observe the terms of any license or applicable end user subscriber agreement for Branded Products made available to Customer;
- (c) that the Company will not have any liability to Users or any third parties resulting from Customer's violation of any license agreements or end user subscriber agreements that govern the Branded Products; and
- (d) that the Customer will be solely responsible for any additional software or products that Customer installs or uses in connection with the Services, including any adverse impact to the Services caused by such additional software or products.

Additional restrictions may apply to any Microsoft software made available to the Customer in connection with the Services. The Customer agrees to comply with all applicable Microsoft Corporation licensing terms. Customer's own Microsoft licenses must be maintained under

Microsoft's Software Assurance Program. In the event Customer's Software Assurance expires, Customer must either (i) renew its compliance with the Software Assurance Program, (ii) purchase a valid Microsoft license from Company; or (iii) remove the expired license from the Services. Customer shall reimburse Company for any costs incurred by it as a result of the Customer's non-compliance with this clause.

- 9.4 **Third Party Vendors:** Company may from time to time introduce Customer to third-party vendors with whom Customer contracts for products and/or services. Company provides no warranty with respect to such products and/or services, and Customer is responsible for assessing the appropriateness of such third-party vendors and their products and/or services for Customer's requirements.

10 INTELLECTUAL PROPERTY INDEMNITY BY COMPANY

- 10.1 **Indemnity:** Company agrees to defend, indemnify and hold Customer harmless from and against any and all third-party claims, damages, losses, liability, causes of action, judgments, costs or expenses (including reasonable legal fees) directly or indirectly arising from any claim alleging that any part of the Services provisioned by the Company infringes any third party's intellectual property rights.

- 10.2 **Remedies:** If a third-party infringement claim described above in Section 10.1 prohibits Customer's use of the Services in accordance with the Agreement, or if at any time any of Customer's Services are, or in Company's opinion are likely to become the subject of a claim or allegation of infringement of a third party's intellectual property rights, Company in its discretion will either:

- (a) replace or modify the affected Services to make them non-infringing;
- (b) obtain a license for the Customer to continue to use the affected Services; or
- (c) terminate the affected Services and refund Customer the remainder of Fees actually paid by Customer in respect of such affected Services.

- 10.3 This Section 10 represents Customer's sole and exclusive remedies with respect to any claim or allegation that the Services (or part thereof) infringes a third party's intellectual property right.

11 LIMITATION OF LIABILITY

- 11.1 The provision of the Services by the Company is subject to the limitations on liability outlined in this Section and sets out the Parties' entire liability arising out of or in connection with the Agreement. Customer acknowledges and agrees that the Fees for the Services under the Agreement are based upon this allocation of risk.

- 11.2 Nothing in the Agreement is intended to exclude or limit either Party's liability for any loss or damage resulting from:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other type of liability that cannot be limited or excluded as a matter of law.

- 11.3 Neither Party will be liable to the other in respect of:

- (a) any indirect, incidental, special, punitive, exemplary or consequential losses or damages of any kind;
- (b) any lost profits or opportunity;
- (c) any loss of revenue;

- (d) damages or costs associated with the loss or compromise of data, including Customer Data; or
- (e) any increased or duplicated costs, or any costs related to replacement services by third parties,

howsoever arising in connection with the performance or non-performance of the Agreement, even if a Party has been informed of the possibility thereof.

- 11.4 Except as set forth in Article 10 of the Agreement, Company's liability to the Customer hereunder however arising, whether in tort (including negligence), contract or otherwise, is limited to and will not exceed the lesser of:

- (a) an amount equal to three (3) times the monthly recurring Fees paid or payable by the Customer for the Service(s) to which the claim relates; or
- (b) one hundred thousand (\$100,000) dollars.

- 11.5 The Service Credits referenced in the SLA are the Customer's sole and exclusive remedy in respect of any Service Impact or the failure by Company to comply with the standard of the performance terms for a particular Service.

12 DISCLAIMERS

- 12.1 Company, its parent company, its affiliates and subsidiaries hereby disclaim, to the fullest extent permitted by law, any express or implied warranties and conditions of any kind or nature whatsoever, including warranties related to any course of dealing, usage or trade practice, or implied warranties and conditions of merchantability or fitness for a particular purpose.
- 12.2 Without limiting the generality, Company shall not be liable for (a) any act or omission of any third party telecommunications carrier whose facilities and services are used by the Customer in establishing connections to the Services; and (b) defamation or copyright infringement or any other claim arising from materials transmitted or received over Company's networks or equipment.

13 GOVERNING LAW

Agreement will be governed by, and construed in accordance with, the laws of the province of Ontario, Canada, and all disputes arising out of or related to the Agreement will be brought exclusively in a court of competent jurisdiction located in the City of Toronto, Ontario; provided, however that neither Party will be prevented from enforcing any related judgment against the other Party in any other jurisdiction.

14 DISPUTE RESOLUTION

The Customer and the Company agree to use reasonable efforts to resolve any breach of the Agreement through good faith discussions prior to either Party taking any legal action with respect to such breach, except that either Party may seek immediate injunctive relief for any alleged or perceived violation of the other Party's obligations with respect to Confidential Information, Customer's breach of the AUP, or any use of the Services by Customer or Customer's Users which violates applicable law. Such discussions will involve senior representatives nominated by each Party and, if reasonably required, ultimately include the executive management of each Party if necessary. Only if such aforementioned dispute cannot be resolved through such good faith discussions within thirty (30) days may legal action be taken by either Party to enforce its rights under the Agreement. In the event either Party commences an action to enforce the terms of Agreement, the prevailing Party shall be entitled to seek its reasonable attorney fees and costs from the court of competent jurisdiction.

15 MISCELLANEOUS PROVISIONS

- 15.1 The Customer shall not, by virtue of receiving Services or for any other reason, acquire any interest in, nor be entitled to file any liens or encumbrances of any kind upon the premises, facilities and/or infrastructure used to provision the Services.
- 15.2 Except for the Customer's payment obligation to Company under the Agreement, neither Party shall be liable or responsible to the other Party for any delay in performance or for non-performance in whole or in part of the Agreement caused by the occurrence of acts of God, floods, war, fires, natural disasters, famine, earthquake, embargoes, labour disputes, casualties, civil disturbance, acts of insurrection by civil and military authorities, terrorist acts, fiber cuts, other material or component failures, failure or disturbance of the internet or of the networks of other companies, supply chain disruptions, lack of or delay in transportation, shortages, failure of a public utility, public health emergencies, unavailability or delay in delivery not resulting from the responsible Party's failure to timely place orders therefor, government action, legislative changes or any other cause or contingency beyond its reasonable control ("**Force Majeure Event**"). In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. If a Force Majeure Event causes a material failure or delay in the performance of any Service by Company for more than thirty (30) consecutive days, the Customer may immediately terminate the affected Service(s) upon five (5) Business Days written notice to Company.
- 15.3 **Modifications:** The Agreement may be amended only by mutual written agreement executed by the authorized representatives of the Parties.
- 15.4 **Relationship:** Customer and Company are independent contractors and the Agreement does not establish any partnership, joint venture, agency, employment, franchise or other relationship between any User and Company; and the Customer shall not permit, or directly or indirectly cause such relationship between any User and the Company.
- 15.5 **Waiver:** The waiver of any breach or default of the Agreement will not constitute a waiver of any subsequent breach or default and will not amend or negate the rights of the waiving Party.
- 15.6 **Assignment:** Customer may not sell, assign or transfer for rights or delegate Customer's duties under the Agreement in whole or in part without the prior written consent of Company, and any attempted or actual assignment or delegation without Company's consent will be void.
- 15.7 **Third Party Beneficiaries:** Customer and Company agree that, except as expressly provided in the Agreement or the terms and conditions of use of any Branded Products, there will be no third-party beneficiaries to the Agreement.
- 15.8 **Severability:** If any provision of the Agreement is held to be invalid or unenforceable for any reason, that provision will be deemed to be severed from the Agreement and the remaining provisions will continue in full force and effect.
- 15.9 **Survival:** Any provision of the Agreement that, by its nature, is applicable to circumstances arising after the termination or expiration of the Agreement will survive such termination or expiration and remain of full force and effect. No termination or expiration of the Agreement will relieve either Customer or Company from any liability arising out of any breach of the Agreement occurring prior to the termination or expiration.
- 15.10 **Export Matters:** Customer's use of the Services must be in compliance with applicable laws. Without limiting the foregoing statement, Customer agrees to comply with all restrictions and regulations of the U.S. Department of Commerce, Foreign Affairs, Trade, Development Canada,

the UK Department for Business, Innovation and Skills, or any other domestic or foreign agency or authority in connection with Customer's use of the Services, and to not, in violation of any laws, transfer or authorize the transfer of any Services into any U.S., Canadian, UK or U.N. embargoed countries. Customer represents and warrants that it is not located in, under the control of, or a national or resident of any such country or using the Services for a purpose that is otherwise prohibited in accordance with any such list.

- 15.11 **Anti-Corruption:** The Customer will comply with all applicable anti-corruption laws of Canada, United States and United Kingdom and other countries, including the US *Foreign Corrupt Practices Act*, the *Criminal Code of Canada* and *Corruption of Foreign Public Officials Act* and the U.K *Bribery Act 2010*. Neither the Customer nor any of its representatives shall, directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to any official or employee of any government, government agency, political party or public international organization, or any candidate for political office, to (i) improperly influence any act or decision of such official, employee or candidate for the purpose of promoting the business interests of the other party in any respect, or (ii) otherwise improperly promote the business interests of the other party in any respect.
- 15.12 **Notice:** Unless otherwise specified in the Agreement, all notices, demands, requests or other communications required or permitted under the Agreement will be deemed given, in the case of notice to Company, when delivered personally or upon delivery of overnight or first-class mail (to: 550 Cochrane Drive Markham, ON L3R 8E2), together with a copy to contracts@qudatacentres.com; and, in the case of notice to Customer, by email to a designated contact email address in the Company's records for the Customer, via Company's customer portal, or upon delivery of overnight or first class mail to Customer's designated contact address in the Company's records.
- 15.13 **Publicity and Feedback:** Customer agrees that Company may publicly disclose that it is providing Services to Customer and may use Customer's name, including its trademarked logo to identify Customer in promotional materials, including press releases and on Company's websites. The Customer agrees, at its sole discretion, to provide to Company with suggestions, comments and feedback regarding the Services or portion thereof, including but not limited to its user experience, usability, performance matters and technical issues (collectively, "**Feedback**"). If the Customer provides such Feedback to Company, the Customer hereby grants Company a worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid-up rights to make, use, copy, modify, sell, distribute, publicly perform or display, sublicense (including the right to sublicense to further third parties), and create derivative works of the Feedback as part of any Company Services, Services specification, Services documentation and/or Services marketing.
- 15.14 **Construction:** The headings in the Agreement are for the purpose of convenience only, and shall not limit, enlarge, or affect any of the covenants, terms, conditions or provisions therein. Each Party has had an opportunity to review, seek clarity and/or revise the terms of the Agreement, including the wordings and phrases used therein to give effect to such terms; therefore, no rule of strict construction shall apply against or in favor of either Party.
- 15.15 **Entire Agreement:** The Agreement constitutes the entire agreement between the Customer and the Company with respect to the subject matter hereof, including the Services, and does not include any representation, promise, warranty or guarantee other than as expressly set out in the Agreement.