



sales@trgdatacenters.com . 832-663-6028  
2626 Spring Cypress Road | Spring | TX 77388

## TRG - MASTER SERVICES AGREEMENT

This agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between Technical Realty Group of Texas, LLC, (TRG") located at 2626 Spring Cypress Road Spring, TX 77388 and \_\_\_\_\_ located at \_\_\_\_\_ ("Customer").

These terms apply to all services provided by TRG to customer.

TRG agrees to provide and Customer agrees to purchase the Services described in the attached Statement of Work. Any change in the scope of Services or additional Services engagements must be agreed upon in writing between TRG and Customer with a new SOW or an Amendment to an existing SOW, and may result in additional fees and scheduling changes. TRG will maintain the availability of the Services as set forth in the SOW or Service Level Agreement "SLA".

1. **Payments.** Customer will pay without deduction or set-off the fees summarized on the SOW for the Services purchased by Customer. Customer must notify TRG in writing of any disputed Fees within thirty (30) days of the invoice date for such fees or Customer waives any right to dispute such amounts. Invoices are delivered monthly. TRG bills in advance for Service to be provided during the upcoming month, except for any charges that are dependent upon usage of Service, which are billed in arrears. Billing for partial months is prorated based on a calendar month. All invoices are due Thirty (30) days after the date of invoice. In the event that Customer does not pay each invoice within Thirty (30) days and fails to remedy that late payment within Thirty (30) days from notice, TRG may block Customer's administrative rights to the Services and Equipment utilized to provide the Services until such payment is made. Past due amounts bear interest at the rate of 1% per month or the highest rate allowed by law, whichever is less, beginning from the date first due until paid in full. Customer shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on TRG's net income) assessed on the Services.
2. **Term.** The Term of this Agreement will commence upon the date this agreement is signed and executed by the Customer and TRG and continue through the latest date that any SOW is in effect. Upon termination TRG shall be entitled to immediate payment for periods and partial periods that occur before the effective date of termination and for which TRG has not yet been paid. The term of the individual services as defined in the Statement of Work shall automatically renew on a month-to-month basis unless cancelled in writing by either party within 30 days prior to expiration. In any automatic month-to-month renewal term, charges shall adjust to the then published rates. On contracts, the greater of a 3.5%, power rate adjustment (as calculated by real passthrough cost offset from 5 year average), or CPI (Consumer Price Index) annual escalator will be applied to all base monthly recurring costs, year over year applied on 01JAN of each year.
3. **Termination.** If Customer terminates a SOW prior to the end of the term of a SOW (or in the event that the delivery of the Services is terminated by TRG as the result of an uncured default by Customer pursuant to Section 4 of this Agreement), Customer shall pay TRG a termination charge in a lump sum equal to a percentage of the total amount of Fees identified in the SOW which would have been payable for such Service during the entire Term for such Service as defined in the following section 3.1. (less any Fees for such Service already paid to TRG). Customer acknowledges and agrees that (i) the injury caused to TRG by Customer's termination of one or more Service(s) will be difficult or impossible of accurate estimation; (ii) both Customer and TRG intend that the Termination Charge provides for liquidated damages, rather than a penalty; and (iii) that the Termination Charge constitutes a reasonable pre-estimate of the probable loss or injury that will be caused to TRG by Customer's termination of one or more Service(s). The foregoing obligations shall survive expiration or termination of the Agreement for any reason whatsoever.
  - 3.1 **Termination charge schedule.** 50% of the remaining billable amount. The parties acknowledge that the termination charges set forth in this Section 3 are a genuine estimate of the actual damages that TRG will suffer and are not a penalty.
4. **Termination Due to Breach.** In the event that Customer commits a material breach of any of its obligations, customer shall be given a period of fifteen (15) business days to cure the breach. In the event that breach is not cured within the fifteen (15) business day period, TRG may terminate this Agreement by sending written notice of termination to Customer with termination effective on the date such notice is given and (at TRG's sole option) immediately suspend, interrupt or terminate one or more Service(s) to which such breach pertains.
5. **Effects of Termination.** Unless the Parties agree otherwise in writing, termination of the Agreement shall also serve to terminate all Service(s) and Statements of Work and to cancel all Work Orders, and Customer shall pay TRG all Fees and Expenses earned or incurred by TRG pursuant to such Service(s), Statements of Work and Work Orders through the date of termination, less any payments made hereunder by Customer prior to said termination. All property of each Party shall be returned to its owner once all due fees are paid in full. In the event of Customer's Default hereunder, TRG may (A) suspend performance and/or terminate this Agreement and any SOW in whole or in part, in which event TRG shall have no further duties or obligations thereunder, and/or (B) pursue any remedies TRG may have under this Agreement.

- 6. Confidentiality.** TRG and Customer acknowledge that proprietary and confidential information (including without limitation trade secrets) (collectively "Proprietary Information") of each Party may be disclosed to the other Party throughout the term of this Agreement. Pursuant to the terms of our Mutual Non-Disclosure Agreement ("NDA"), and in the event that a Non-Disclosure Agreement has not been executed between the Parties, both Parties agree that they have a duty to maintain the confidentiality of all matters related to our dealings between Customer and TRG. such Proprietary Information except to the extent that such Proprietary Information was: (i) made publicly available by the owner of the Proprietary Information or lawfully disclosed by a non-party to this Agreement; (ii) lawfully obtained from any source other than the owner of the Proprietary Information; (iii) independently developed by personnel of the receiving Party to whom Proprietary Information had not been previously disclosed and not based on or derived from such Proprietary Information; or (iv) previously known to the receiving Party without an obligation to keep it confidential. TRG may disclose such information to its successors or assigns, subsidiaries, officers, directors, employees, agents, independent contractors, licensees, licensors and suppliers which have signed and are bound by a suitable non-disclosure agreement with TRG in order for TRG to perform the service in this contract. The obligations set forth in this Section 10 shall survive the termination of this Agreement for any reason whatsoever for a period of three (3) years; provided, however, that, with respect to Proprietary Information which constitutes a trade secret, the obligations set forth in this Section 6 shall survive the termination of this Agreement for any reason whatsoever for so long as such Proprietary Information constitutes a trade secret under applicable law.
- 7. Warranties. By TRG.** TRG represents and warrants that it shall perform the Services in a workmanlike and professional manner and that the Services will comply with performance standards established under this Agreement, the applicable SOW and any attached Service Level Agreement ("SLA"). Except to the extent that Customer's remedies for breach of an SLA are set forth in the SLA, TRG's sole obligation, and Customer's sole remedy, for any breach of the foregoing warranty shall be that TRG shall, at TRG's option and as applicable, use commercially reasonable efforts to re-perform, repair or replace the relevant Services.
- 8. Disclaimer.** EXCEPT AS SET FORTH IN SECTION 7.1, TRG MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF UNINTERRUPTED OR ERROR-FREE OPERATION AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICE(S) OR ANY ASPECT THEREOF, AND ALL WARRANTIES WITH RESPECT THERETO ARE HEREBY EXPRESSLY DISCLAIMED.
- 9. Indemnification.** Each party shall indemnify and hold the other party, its successors or assigns, subsidiaries, officers, directors, employees, agents, independent contractors, licensees, licensors, suppliers and customers (excluding Customer) (collectively "Indemnitees") harmless for any losses, claims, damages, awards, penalties, or injuries by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request.
- 10. Limitation of Liability.** Any other provision of this Agreement to the contrary notwithstanding, the aggregate liability of all Indemnitees for any losses or damage, whether direct or indirect, arising out of or in connection with the Service(s), including without limitation any cause of action sounding in contract, tort or strict liability, shall be limited to actual, direct damages incurred but in no event shall exceed the greater of the limits of any applicable insurance coverage actually paid, including any excess or umbrella policies. Neither party shall be liable to the other, and each party hereby waives any right to claim, consequential, indirect, punitive, special or incidental damage or lost profits or any other consequential damages, cover damages, even if such party was advised of the possibility of same. No action arising out of this Agreement, regardless of form, may be brought by either party against the other more than one (1) year after the cause of action arose. Without limiting the foregoing:

  - 10.1 Unless otherwise explicitly stated in the SOW, Customer acknowledges that TRG is not responsible for controlling or monitoring any content, information, data or other materials stored on, transmitted via, or accessible through use of, the Service(s), and TRG will have no liability to Customer whatsoever in connection with such content, information, data or other materials (including without limitation the accuracy or suitability thereof or unauthorized access or damage to, alteration, theft, corruption destruction or loss of, Customer's data or other materials);
  - 10.2 TRG will have no liability to Customer whatsoever in connection with any harm or loss arising from or in connection with unauthorized access to the Service(s); and
  - 10.3 All Indemnitees are expressly made third party beneficiaries of this Section 14.
  - 10.4 **Survival.** This Section 10 shall survive expiration or termination of this Agreement for any reason.

- 11. Assignment.** This Agreement shall accrue to the benefit of and be binding upon the Parties hereto and any successor or permitted assignee or transferee. Except as expressly provided, neither Party may, or shall have the power to, assign this Agreement or delegate its obligations hereunder without the prior written consent of the other, except that either Party may assign its rights and obligations under this Agreement without the approval of the other Party: (a) to an entity which acquires all or substantially all of the assets of the assigning Party; (b) to any Affiliate, in which event the assignor shall remain liable as a guarantor of the assignee/Affiliate's performance of such Party's obligations hereunder; (c) to a successor in a merger or acquisition; or (d) as collateral to any institutional lender.
- 12. Notices.** All notices required under the Agreement shall be delivered in writing, addressed and sent to the address provided herein and to the attention of the Party executing the Agreement or the person's successor, by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail. Unless otherwise agreed to by the Parties, all notices required under the Agreement shall be deemed effective when received.
- 13. Insurance.** Each party will keep in full force and effect during the term of this Agreement: (i) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage and (ii) workers' compensation insurance in an amount not less than that required by applicable law.
- 14. Force Majeure.** If either Party shall be prevented from performing any portion of this Agreement (except the payment of money) by causes beyond its control, such Party shall be excused from performance for the period of the delay and the time for such Party's performance shall be extended for a period of time equal to the duration of such delay.
- 15. Severability.** If any provision of the Agreement is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.
- 16. Superiority.** This Agreement shall not be supplemented or modified by any course of dealing or trade usage. Addition to or variance from the terms and conditions of the Agreement by Customer, including without limitation any additional or varying terms contained in Customer's preprinted forms, correspondence or other documents transmitted to TRG, shall be of no effect, unless otherwise expressly provided in this Agreement. If any conflict of terms set forth in this agreement and its schedules, exhibits, SOWs and attachments arises, the most recently executed agreement signed by both parties shall prevail.
- 17. Arbitration.** All disputes or claims shall be settled through a single session binding arbitration to be carried out in association with the American arbitration association via a randomly assigned arbitrator from them and the cost of arbitration shall be split equally between TRG and customer. This shall be conducted in Spring Texas and may occur via teleconference if customer chooses not to travel. The award shall be enforced through Texas courts and domesticated as a judgement in customer's home state if customer does not settle the award amount at the closing of arbitration.
- 18. Construction, Venue, Jurisdiction.** Any claim or dispute arising out of this Agreement shall be governed by the laws of the state of Texas.
- 19. Waiver.** No waiver, amendment, or other modification of this Agreement will be effective unless in writing and signed by the party against whom enforcement is sought, and waiver of a right or remedy on one occasion by a Party shall not be deemed a waiver of such right or remedy on any other occasion.
- 20. Survival.** Sections of this Master Agreement, including those relating to payments, confidentiality, indemnification, and limitation of liability shall survive any expiration or termination of this Agreement.
- 21. Entirety.** This Agreement and its schedules constitute the complete and entire statement of all terms, conditions, and representations of the agreement and supersede all prior writings or understandings.



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By signing below, the parties agree to the TRG Master Services Agreement, including all General Terms, Managed Services Descriptions, Statement(s) of Work, Service Level Agreements and any other attachments or exhibits.

Technical Realty Group of Texas, LLC

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

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

Signature: \_\_\_\_\_

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

Client Company: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

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