

Master  
Service  
Agreement  
(Cryptocurrency  
Mining Colocation)



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Customer and Tonaquint Data Center, Inc. ("TDC", "we", and "us") agree to each of the following terms:

**Section 1. Defined Terms.** Initially capitalized terms shall have the following meanings or the meanings assigned to them in the other Sections of this Master Services Agreement:

1.1. This "Agreement" means this Master Services Agreement (Cryptocurrency Mining Equipment Colocation), together with the AUP attached to this Master Services Agreement as **Schedule A**; any related Service Level Agreements (SLAs) attached to this Master Services Agreement as **Schedule B**; the TDC Proposal attached to this Master Services Agreement as **Schedule C**, which, when signed by Customer and us, is the Term Sheet entered into between Customer and us; these General Terms & Conditions; and all other Schedules attached to the Term Sheet or this Master Services Agreement, which may include, but not be limited to, Product Terms & Conditions, and all written amendments entered into between Customer and us. Each and every Schedule to this Agreement referenced herein or in the Term Sheet is incorporated herein, whether or not physically or electronically attached hereto.

1.2. "AUP" means our Authorized Use Policy regarding the Customer's use of the Managed Service attached to this Master Services Agreement as **Schedule A**, as it may be amended from time to time in accordance with Section 5.

1.3. "Business Day" means Monday through Friday, 8:00 a.m. to 6:00 p.m., United States Mountain Time, excluding any federal or Utah state public holiday or other day that is a TDC holiday.

1.4. "Managed Service" means the provision by us to Customer of the information technology services, including consulting, managed and data center service offerings, the servers, other devices and other services as described in a Term Sheet and the related SLAs.

1.5. "Protected Information" means any (i) "non-public personal information," as that term is defined in the Gramm-Leach-Bliley Act, (ii) "protected health information" as that term is defined in the regulations under the Health Insurance Portability and Accountability Act, (iii) all information that identifies an individual, such as name, social security number or other government issued identification number, date of birth, mother's maiden name, unique biometric data, unique electronic identification number, address, or telecommunication number and (iv) all other information that is the subject of legal or regulatory security requirements; in each case, as in effect as of the Effective Date and as subsequently enacted.

1.6. "Service Commencement Date" means the date on which we send an e-mail message to Customer that provides access codes and passwords for use in connection with the Managed Service and the Managed Service is available for access by Customer in accordance with this Agreement, unless the applicable SLA specifies a different Service Commencement Date.

1.7. "Service Level Agreement", also referred to as an "SLA", means any one (1) or more of the TDC standard Service Level Agreements (SLAs) indicating the types of Managed Services being provided to Customer by TDC, each of which is incorporated by reference in the Term Sheet, as it may be amended from time to time by the written agreement of Customer and us. If more than one (1) Term Sheet for a Managed Service exists, then the Service Level Agreement(s) for the Managed Service(s) described in the most recently executed Term Sheet executed by Customer and are the Service Level Agreement(s) that governs those Managed Service(s). The applicable forms of Service Level Agreements (SLAs) are attached to this Master Services Agreement as part of **Schedule B**.

1.8. "Service" means the Managed Services and any Supplemental Services provided by us to Customer pursuant to this Agreement.

1.9. "Supplemental Services" means the services described in Section 2.2 below.

1.10. "Term" means the Initial Term and any Renewal Term or Extended Term, collectively.

1.11. "Term Sheet" means a TDC Term Sheet that has been signed by Customer and us. Each TDC Term Sheet is a part of **Schedule C** hereto, and incorporates this Master Services Agreement by reference, as it may be amended from time to time in accordance with this Agreement.

**Section 2. Services.**

2.1. **Managed Services.** Contingent upon Customer's satisfaction of our credit approval requirements and our verification of the information provided by Customer for the purpose of establishing the Service, we shall provide the Managed

Services in accordance with the terms and conditions of each Term Sheet and related Service Level Agreements (SLAs) entered into pursuant to this Agreement and the other terms of this Agreement.

2.2. Supplemental Services. In addition to the Managed Service, we may from time to time perform certain additional services on an hourly or fixed fee basis, which may include the customization of the Managed Services at Customer's request and other professional computer software and services related to the Managed Services. Supplemental Services will be performed only with Customer's written agreement in advance and will be invoiced at our then current rates or other rates approved in advance in writing by Customer and us. We may also perform services as described in the AUP for the fees stated in the AUP as necessary to remediate Managed Service problems caused by AUP violations by Customer without obtaining Customer's consent.

**Section 3. Term.** This Agreement shall remain in effect for so long as any Term Sheet incorporating this Agreement is in effect. The term of each Term Sheet begins on the Service Commencement Date for that Term Sheet and continues for the period stated in that Term Sheet (the "Initial Term"). We and Customer may agree to one or more additional terms having a fixed number of months to follow the expiration of the Initial Term (each a "Renewal Term"). If upon the expiration of the Initial Term, no Renewal Term has been established by the agreement of the parties, the Term Sheet shall automatically renew for consecutive terms of thirty (30) days (each, an "Extended Term") until we or Customer provides the other party with at least thirty (30) days advance written notice of non-renewal of this Agreement.

**Section 4. Payments.**

4.1. Fees. Customer shall pay the fees stated in the Term Sheet and the fees for any Supplemental Services as described in Section 2.2. Our first invoice under a Term Sheet shall include any applicable set up fees and a prorated part of the monthly recurring fee from the Service Commencement Date to the last day of the calendar month containing the Service Commencement Date. Following the Service Commencement Date, monthly recurring fees shall be invoiced in advance on or about the first day of each calendar month and are due within fifteen (15) days following our sending Customer an invoice. Invoices for Supplemental Services are due within fifteen (15) days following our sending Customer an invoice for any such Supplemental Services. Following the expiration of the Initial Term, unless we and Customer have agreed to a Renewal Term as described in Section 3 that modifies our fees for the Services, we may modify the monthly recurring fees for any Managed Service not fewer than thirty (30) days after giving written notice to Customer.

4.2. Collections. We may suspend any or all Services, including powering off any mining hardware, if payment for any Service is not paid prior to the fifth (5<sup>th</sup>) calendar day of the month following the calendar month in which services are invoiced. No written notice of suspension shall be required except as generally set forth in section 6 below. Customer shall pay our then current reinstatement fee following such a suspension. We may charge interest on amounts that are overdue at the lesser of one and one half percent (1.5%) per month or the maximum rate allowed under applicable law. In addition, upon demand Customer shall pay our costs of collection for all overdue amounts for the Services, including collection agency fees, attorneys' fees and court costs.

4.3. Early Termination. Customer acknowledges that the amount of the monthly recurring fee for each Managed Service is based on Customer's agreement to pay the monthly recurring fees for the entire then current Term. Without limiting any other remedy available to us arising from an early termination of this Agreement, if we terminate this Agreement for Customer's breach of this Agreement in accordance with Section 12.2 (i), (ii) or (iii), all fees due under this Agreement, including the monthly recurring fees for the remaining part of the Term, are due fifteen (15) days following such termination of the Managed Service.

4.4. Taxes. All federal, state or local taxes applicable to the Services shall be added to each of our invoices for the Services. Customer shall pay all such taxes to us unless a valid exemption certificate is furnished to us for each of the states of use of the Managed Service by Customer.

**Section 5. AUP.** We may, in our reasonable commercial judgment, amend the AUP from time to time to describe reasonable restrictions and conditions on Customer's access to and use of the Services. Any such amendments to the AUP are effective on the earlier of fifteen (15) days following our notice to Customer that an amendment has been made, or the commencement date of any Renewal Term or Extended Term, as the case may be. However, if: (i) the amendment would materially and adversely affect Customer, and (ii) Customer provides us with a written notice describing its objection to the amendment in reasonable detail within ten (10) days of the effective date of the amendment, and (iii) we do not agree to waive the amendment as to Customer within five (5) days after such Customer notice, then Customer may terminate this Agreement as provided in Section 12.1 (iii).

**Section 6. Suspension of Service.** We may suspend Services to Customer without liability if: (i) we reasonably believe that the Services are being used in violation of this Agreement or applicable law; (ii) Customer fails to cooperate with any reasonable investigation by us of any suspected violation of the AUP; (iii) there is a denial of service attack on Customer's servers or other event for which we reasonably believe that the suspension of Services is necessary to protect our network or our other Customers; (iv) requested by a law enforcement or government agency; or (v) any other reason set forth in this Agreement, the AUP, or any SLAs or Term Sheets accepted in conjunction herewith. Information on our servers will be unavailable during a suspension of the Services. We shall give Customer written notice at least twenty-four (24) hours in

advance of a suspension under this Section 6, unless a law enforcement or government agency directs otherwise, or suspension on shorter or contemporaneous notice is necessary to protect us or our other Customers from an imminent and significant risk. We shall not suspend the Services if the grounds for the suspension are cured during the notice period. We shall promptly reinstate suspended Services when the reasons for the suspension of Services are cured.

### **Section 7. Representations and Warranties.**

7.1. Reciprocal. We represent and warrant to Customer, and Customer represents and warrants to us, that: (i) it has the power and authority to enter into this Agreement and to perform its obligations under this Agreement; (ii) it has taken all necessary action on its part to authorize the execution and delivery of this Agreement and (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or violate applicable laws or regulations, and do not conflict with or constitute a default under its charter documents or any agreement to which it is a party.

7.2. Customer. Customer represents and warrants to us that: (i) the information Customer has provided to us for the purpose of establishing an account with us is accurate; (ii) Customer will not use the Services in violation of any federal, state or other law, rule or regulation (iii) Customer shall not resell or make available any of the Services to any person or entity and (iv) Customer shall perform its security and other obligations set forth in this Master Services Agreement, including but not limited to the Term Sheet, the AUP, the General Terms and Conditions, and all Schedules attached to the Term Sheet or this Master Services Agreement, which may include, but not be limited to any related SLAs and all written amendments entered into between Customer and us.

**Section 8. Unauthorized Use of Service.** We shall perform the specific security services described in the Term Sheet. Customer shall be responsible for all unauthorized use of the Services by any person or entity, except as otherwise expressly set forth in this Agreement.

### **Section 9. Indemnification.**

9.1. Indemnification. The indemnification obligations set forth in this Section 9 shall be the parties' exclusive rights and remedies with respect to this Agreement.

9.2. Indemnity by Customer. Customer shall indemnify and hold harmless us, our affiliates, and each of their respective officers, directors, members, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties and fines of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to any of the following: (i) the actual or alleged use of the Services in violation of: (a) the AUP, (b) any other part of this Agreement or (c) applicable law or (ii) any breach by Customer of any of its obligations under this Agreement.

9.3. Reciprocal Indemnification. Each party shall indemnify and hold harmless the other party, the other party's affiliates, and each of their respective officers, directors, members, agents and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties and fines of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to the indemnifying party's actual or alleged: (i) gross negligence, (ii) willful misconduct or (iii) infringement or misappropriation of a third party's copyright, trade secret, patent, trademark or other intellectual property right.

9.4. Procedures. A party seeking indemnification under this Section 9 shall provide prompt notice of its claim for indemnification to the indemnifying party; provided, however, that failure to give prompt notice shall not affect the indemnifying party's obligations under this Section 9 unless and to the extent that the failure materially prejudices the defense of the claim. The indemnifying party may select counsel to defend ~~the indemnified party~~ in respect of any indemnified claim under this Section 9; ~~provided, however, that the counsel selected must be qualified to defend the indemnified claim in the judgment of the indemnified party, which judgment shall not be unreasonably withheld or delayed.~~ The indemnified party shall keep the indemnifying party fully informed of the status of the claim, including all communications from the claimant, and shall cooperate with the indemnifying party with respect to any judicial proceeding or dispute resolution procedure. The indemnifying party shall not settle any claim covered by this Section 9 without the written consent in advance of the indemnified party, which consent shall not be unreasonably withheld or delayed. If, however, such settlement shall be only for a monetary amount covered by the indemnifying party's indemnification obligation under this Section 9 and shall not impose any other liability on the indemnified party, then, no consent shall be required from the indemnified party. Notwithstanding anything in this Section 9 to the contrary, if we are indemnifying multiple Customers related to the subject matter of the indemnification claim, we shall have the right to seek consolidation of all such actions and to select counsel to defend the actions.

9.5. Patent, Copyright, Trade Secret. Notwithstanding any other provision in this Section 9, if we determine in our sole discretion that any Service may involve any product that may become subject to a claim of infringement or misappropriation, we may elect to (a) obtain the right of continued use of such product, or (b) replace or modify such product to avoid such claim. If we do not elect to do so, then all applicable licenses involving the product shall terminate. This Section 9.5 states our entire liability and Customer's sole and exclusive remedies for patent or copyright infringement and trade secret misappropriation.

**Section 10. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CUSTOMER AGREES AND ACKNOWLEDGES THAT WE MAKE NO REPRESENTATION OR WARRANTY TO CUSTOMER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE CONDITION, QUALITY, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WE DO NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY.

**Section 11. Limitation of Damages.**

11.1. Credits. THE CREDITS DESCRIBED IN ANY APPLICABLE SERVICE LEVEL AGREEMENT AND TERM SHEET ARE CUSTOMER'S SOLE REMEDY FOR OUR FAILURE TO MEET THE SERVICE REQUIREMENTS STATED IN SUCH DOCUMENTS.

11.2. No Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES.

11.3. Monetary Limitation. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OUR MAXIMUM AGGREGATE MONETARY LIABILITY UNDER ANY THEORY OF LAW (INCLUDING BREACH OF CONTRACT, TORT, STRICT LIABILITY AND INFRINGEMENT) SHALL NOT EXCEED SIX (6) TIMES THE MONTHLY RECURRING FEE PAYABLE UNDER THE TERM SHEET IN EFFECT AT THE TIME OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM.

**Section 12. Termination.**

12.1. By Customer. Customer may terminate this Agreement before the expiration of the Initial Term or any Renewal Term without liability to us (except for amounts due for Services through the effective date of such termination and subject to Section 4.2) as follows: (i) we fail in a material way to provide the Managed Service in accordance with the terms of this Agreement and do not cure the failure within 10 days following receipt of Customer's written notice describing the failure in reasonable detail; (ii) we materially violate any other provision of this Agreement and fail to cure the violation within 30 days following receipt of Customer's written notice describing the violation in reasonable detail or (iii) 30 days after written notice, in the event of an amendment to the AUP that materially and adversely affects Customer that is not waived by us as provided in Section 5.

12.2. By Us. We may terminate this Agreement before the expiration of the Initial Term or any Renewal Term for any reason in our sole discretion, with or without cause. We will immediately give notice to Customer of such termination. Customer shall be responsible for payment of all amounts accrued up to the date of termination.

**Section 13. Confidentiality.**

13.1. Confidential Information. "Confidential Information" means all information disclosed by one party to the other, whether before or after the execution of this Agreement, including: (i) with respect to us, our unpublished prices and other terms of the Services, audit and security reports, server configuration designs, data center designs (including non-graphic information observed by Customer on a tour of a data center), and all other trade, business, financial and technology information about us and our operations that we consider to be our confidential and proprietary property, (ii) with respect to Customer, content transmitted to or from, or stored by Customer on, our servers and (iii) with respect to both parties, all other information that is marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given by the disclosing party to the receiving party within 15 days following such disclosure. Confidential Information shall not include any information that (a) was in the public domain or enters the public domain through no act or omission on the part of the receiving party; (b) is rightfully disclosed to the receiving party by a source not bound by a confidentiality agreement with the other party hereto; (c) was in the possession of the receiving party prior to receipt from the disclosing party as evidenced by the books and records of the receiving party or (d) is developed by the receiving party after receipt of Confidential Information from the disclosing party independent of the Confidential Information of the disclosing party and such independent development is evidenced by the contemporaneous books and records of the receiving party.

13.2. Use and Disclosure. Each party agrees not to use the other party's Confidential Information except in connection with the performance or use of the Services, as the case may be, or the exercise of its rights under this Agreement. Each party agrees not to disclose the other party's Confidential Information to any person or entity except as provided in Section 13.3 and to its employees and consultants who have a need to know the Confidential Information; provided, that such employees and consultants are advised that the Confidential Information so disclosed is the Confidential Information of the other party and such employees and consultants are bound by confidentiality restrictions in a writing at least as protective as those set forth in this Agreement.

13.3. Disclosure of Confidential Information. Notwithstanding anything to the contrary contained in this Section 13, each party may disclose any of the Confidential Information of the other party if, and only to the extent, required to do so by law, governmental regulation or court order; provided, that the party making such disclosure shall give prompt notice thereof to the other party in as far in advance as practicable prior to such disclosure and shall cooperate with the other party, at such other party's expense, to obtain a protective order regarding such disclosure.

**Section 14. Software and Devices Proprietary Notices.** Customer shall not remove, modify or obscure any copyright, trademark or any other proprietary rights notice that appears on any software or devices provided by us to Customer. Customer shall not reverse engineer, decompile or disassemble any software or devices provided by us to Customer.

**Section 15. Administration.**

15.1. Solicitation of Our Employees. Customer shall not solicit or hire any TDC employee to become an employee of, or consultant to, Customer for the Term and for a period of 1 year following the expiration or the termination of this Agreement for any reason.

15.2. Ownership. Each party acknowledges and agrees that the other party retains exclusive ownership and rights in its trade secrets, inventions, copyrights and all other intellectual property of such other party, and that we shall own all right, title and interest in and to all ideas, concepts and inventions and all intellectual property rights related thereto that we may develop in the course of performing the Services. Customer does not acquire any ownership interest or rights to possess any of our servers or other hardware, and has no right of physical access to the hardware. Upon termination of this Agreement, Customer shall promptly release any Internet protocol numbers, addresses or address blocks assigned to Customer in connection with the Service and agrees that we may take action to change or remove any such internet provider addresses.

15.3. Amendment. Except as otherwise expressly provided herein, no amendment of this Agreement shall be binding upon either party hereto unless such amendment is set forth in a writing and executed by both parties hereto. Any waiver of any breach of any provision of this Agreement shall only be effective if in a writing and executed by both parties hereto and only to the extent specifically set forth in such writing.

15.4. No Assignment. Customer shall not assign this Agreement or any part hereof without our prior written consent, which consent shall not be unreasonably withheld or delayed. Customer shall not sublicense any of its rights under this Agreement, nor shall Customer delegate or subcontract to any person or entity any of the performance of Customer's duties hereunder.

15.5. Counterpart. This Agreement may be executed in counterpart, and each such counterpart hereof shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

15.6. Notice. All notices and other communications under this Agreement shall be in writing and shall be delivered personally, by nationally recognized overnight courier or by electronic mail to the appropriate party at its address set forth in the Term Sheet, or at such other address as such party may provide in writing to the other party hereto in accordance herewith from time to time. Any such other notice so delivered shall be effective when personally delivered or sent by electronic mail with a copy thereof retained by the sender, or one (1) day after deposit with such courier with delivery charges prepaid.

15.7. Entire Agreement. This Agreement (consisting of the Term Sheet entered into between Customer and us; the AUP; the General Terms and Conditions; and all Schedules attached to the Term Sheet or this Agreement, which may include, but not be limited to any related Service Level Agreements) constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. The parties hereto agree that this Agreement supersedes and replaces any and all other agreements, whether oral or in writing, regarding the subject matter hereof.

15.8. No Third Party Beneficiary. This Agreement shall be binding upon and inure to the benefit of the parties hereto and our successors and assigns. No other person or entity is an intended third party beneficiary of, or shall be deemed to be a third party beneficiary of, any of the terms and conditions of this Agreement.

15.9. Validity. In case any one or more of the provisions contained in this Agreement should be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby and the parties hereto agree to negotiate in good faith to replace such invalid, illegal or unenforceable provision with a replacement provision to carry out the intent of such provision to the fullest extent lawful.

15.10. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Utah without regard for its conflict of laws principles. The parties irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located within the State of Utah for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.

15.11. Force Majeure. We shall not be in default of any obligation under this Agreement if the failure to perform the obligation is due to any event beyond our control, including significant failure of a part of the power grid, significant failure of

the Internet, natural disaster, war, riot, insurrection, epidemic, pandemic, strikes or other organized labor action, terrorist activity or other events of a similar magnitude or type.

15.12. Remedies. Money damages would not be a sufficient remedy for a breach of certain of Customer's obligations under this Agreement. In addition to any other remedies that might otherwise be available to us at law or in equity, we may seek and obtain specific performance and injunctive relief against the commission or continuation of any such breach or any anticipatory breach of this Agreement by Customer, without bond.

15.13. Survival. The following Sections of this Agreement shall survive any termination or the expiration of this Agreement: Sections 1, 3, 8, 9, 10, 11, 12, 13, 14, and 15.

15.14. Independent Contractor. Customer shall at all times act as and be considered an independent contractor hereunder. Nothing herein contained shall create any employment, agency, partnership, distributorship, joint venture or any other business relationship between Customer and us, other than that of an independent contractor user of the Services. Customer shall have no authority to obligate or bind us with respect to any matter, or make any contract, sale, agreement, warranty or representation, express or implied, on our behalf.

15.15. Limitation on Actions. No legal action, regardless of its form, whether in contract or tort, including negligence, related to or arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action first accrued.

15.16. Attorneys' Fees. In disputes concerning this Agreement, we shall be entitled to the costs of collection, enforcement, and injunctive relief, including but not limited to reasonable attorney's fees and court costs, post-judgment collection expenses, and all necessary expenses, regardless of whether litigation is commenced.

15.17. Terms Generally. The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any part thereof. The definitions in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice may be deferred until, or may be taken or given on, the next Business Day. Unless otherwise specifically indicated, the word "or" shall be deemed to be inclusive and not exclusive.

15.18. Terms and Conditions. To the extent that any of the terms and conditions of this Agreement shall conflict with the TDC "Product Terms & Conditions," the terms and conditions of this Agreement shall control such conflicting terms and conditions.

END OF MASTER SERVICE AGREEMENT

LIST OF SCHEDULES:

- Schedule A – Acceptable Use Policy
- Schedule B – Service Level Agreement(s)
- Schedule C – Term Sheet

**SCHEDULE A**  
**TONAQUINT DATA CENTER ACCEPTABLE USE POLICY ("AUP")**

Tonaquint Data Center, Inc. and its affiliates (collectively, "TDC", "we" or "us") have formulated this Acceptable Use Policy ("AUP") in order to encourage the responsible use of our networks, systems, services, web sites and products (collectively, the "TDC Network and Services") by our Customers and other users of the TDC Network and Services (collectively, "Users"), and to enable us to provide Users with secure, reliable and productive services. By using the TDC Network and Services, Users consent to be bound by the terms of this AUP. We reserve the right to modify this AUP in our discretion at any time. Such modifications will be effective when posted. Any use of the TDC Network and Services after such modification shall constitute acceptance of such modification.

**Suspension; Termination.** Any User that violates any element of this AUP may be subject to a suspension or termination of service, and if we deem it necessary, immediate suspension or termination of such User's service without notice. We may take such further action as we determine to be appropriate under the circumstances to eliminate or preclude repeat violations, and we shall not be liable for any damages of any nature suffered by any Customer, User, or any third party resulting in whole or in part from our exercise of our rights under this AUP.

**Prohibited Content**

In General. The TDC Network and Services must be used in a manner that is consistent with the intended purpose of the TDC Network and Services and may be used only for lawful purposes. Users shall not use the TDC Network and Services in order to transmit, distribute or store material: (a) in violation of any applicable law or regulation, including export or encryption laws or regulations; (b) that may adversely affect the TDC Network and Services or other TDC Customers; or (c) that may expose us to criminal or civil liability. Users are prohibited from facilitating the violation of any part of this AUP or another provider's AUP, including, but not limited to transmitting, distributing, or otherwise making available any product or service that violates this AUP or another provider's AUP.

~~Inappropriate Content. Users shall not use the TDC Network and Services to transmit, distribute or store material that is inappropriate, as we reasonably determine, or material that is illegal (including child pornography), defamatory, libelous, threatening, abusive, hateful, or excessively violent.~~

Intellectual Property. Material accessible through the TDC Network and Services may be subject to protection under privacy, publicity, or other personal rights and Intellectual Property rights, including but not limited to, copyrights and laws protecting patents, trademarks, trade secrets or other proprietary information. Users shall not use the TDC Network and Services in any manner that would infringe, dilute, misappropriate, or otherwise violate any such rights. If a User uses a domain name in connection with any of the TDC Network and Services, the User must not use that domain name in violation of the trademark, service mark, or other rights of any third party.

Harmful Content. Users shall not use the TDC Network and Services to transmit, distribute or store material that may be harmful to or interfere with the TDC Network and Services or any third party's networks, systems, services, or web sites. Such prohibited harmful content includes, but is not limited to, viruses, worms, or Trojan horses.

Fraudulent/Misleading Content. Users shall not use the TDC Network and Services to transmit or distribute material containing fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive, or misleading statements, claims, or representations. In addition, Users are prohibited from submitting any false or inaccurate data on any order form, contract or online application, including the fraudulent use of credit cards.

Email and Unsolicited Messages. Users shall not use the TDC Network and Services to transmit unsolicited e-mail messages, including, without limitation, unsolicited bulk email, where such emails could reasonably be expected to provoke complaints ("spam"). Further, Users are prohibited from using the service of another provider to send spam or to promote a site hosted on or connected to the TDC Network and Services. In addition, Users shall not use the TDC Network and Services in order to (a) send e-mail messages which are excessive and/or intended to harass or annoy others, (b) continue to send e-mail messages to a recipient that has indicated that he/she does not wish to receive them, (c) send e-mail with forged TCP/IP packet header information, (d) send malicious e-mail, including, without limitation, "mailbombing", (e) send or receive e-mail messages in a manner that violates the use policies of any other Internet service provider, or (f) use an e-mail box exclusively as a storage space for data.

**Responsibility for Content.** We take no responsibility for any material created or accessible on or through the TDC Network and Services. We are not obligated to monitor or exercise any editorial control over such material, but reserve the right to do so. If we become aware that any such material may violate this AUP and/or expose us to civil or criminal liability, we reserve the right to block access to such material and suspend or terminate any User creating, storing or disseminating such material. We further reserve the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of the User that we deem responsible for the wrongdoing. Violations of this AUP may be reported by emailing [support@tonaquint.com](mailto:support@tonaquint.com)

## SCHEDULE B

### TONAQUINT DATA CENTER CRYPTOCURRENCY MINING SERVICE LEVEL AGREEMENT

This Service Level Agreement (this "SLA") governs the use of the Services under the terms of the Master Services Agreement (the "Agreement"), between Customer and Tonaquint Data Center, Inc. ("TDC", "we" or "us") and is subject to all of the terms and conditions of the Agreement. TDC may update, amend, modify or supplement this SLA from time to time. The terms and conditions of this SLA are applicable to all Services chosen by Customer, EXCEPT where certain sections hereof are described by heading or otherwise to apply only to one type or group of Services. The Services chosen by Customer are determined by the Term Sheet signed by Customer; acceptance of the Term Sheet describing the Services indicates acceptance of the terms of this SLA relevant to the Services selected, and the intent to be bound hereby.

Capitalized terms used herein but not otherwise defined will have their respective meanings set forth in the Agreement. In the event of any conflict between this SLA and the Agreement, the Agreement will govern.

**Section 1. Services.** TDC will use commercially reasonable efforts to provide the Services selected by Customer as set forth below, and as may be further described in the Term Sheet(s) accepted by Customer.

1.1. Cryptocurrency Mining Hardware Colocation Services. If the Services chosen by the Customer include Colocation Services to store and operate its hardware and software ("Colocation") at a TDC data center: We provide rack space, power and internet connection to the switch port. The Customer is responsible for the complete operation and provisioning of its hardware and application software located within the TDC data center.

#### **Section 2. Definitions.**

2.1. "Account" means the account created with TDC in connection with this SLA that relates to Customer's purchase or subscription to and use of Services by Customer.

2.2. "Backup Data" means all Customer Data targeted for backup, either from Customer's Network to a TDC Network under a TDC management plan, or hosted in a TDC or TDC partner data center.

2.3. "Hosted Data" means all data submitted by Customer to TDC in connection with Managed Hosting Services, including all content, material, IP and similar addresses, recordings, messages, and software.

2.4. "Dedicated Hardware" means the processor(s), memory, storage and other hardware directly allocated to the Customer in the Managed Hosting Service.

2.5. "Network" means the portion of the TDC data center network extending from the network egress point of Customer's Colocation to the outbound port of the data center border router.

2.6. "Power" includes all UPSs, PDUs, generators, and cabling, but does not include the power supplies in the Customer's Colocation equipment.

2.7. "Recovery Point Objective" or "RPO" means the point in time to which Backup Data has been backed up. The RPO will be specified in the Customer Specifications, as amended from time to time.

2.8. "Recovery Time Objective" or "RTO" means the maximum elapsed time required to complete the recovery of Backup Data. The RTO will be specified in the Customer Specifications, as amended from time to time.

2.9. "Scheduled Maintenance" means maintenance of which we notify Customer by email at least ten (10) business days in advance, and that does not exceed sixty (60) minutes in any calendar month.

2.10. "Service Availability" with respect to "Network Availability" means the annual uptime percentage of the Network in a TDC facility, excluding Scheduled Maintenance and Exclusions, during any calendar year; with respect to "Power Availability" means the annual uptime percentage of Power in a TDC facility, excluding Scheduled Maintenance and Exclusions, during any calendar year; with respect to "Dedicated Hardware Availability", means the functioning of all processor(s), memory, storage and other hardware that we specifically guaranty during any calendar year; with respect to "Backup Availability", the functioning of all Backup hosts including compute, storage, and hypervisor during any calendar year.

**Section 3. Service Availability.** TDC makes no representations or warranties regarding Service Availability with respect to cryptocurrency mining hardware colocation. No credits or refunds are available for downtime or interruptions in Service Availability.

**Section 4. Disclaimers Related to Cryptocurrency Mining.** TDC makes no promises, representations, warranties, or guarantees that (1) any cryptocurrency mining conducted at TDC facilities will be profitable for Customer; (2) any cryptocurrency mining activities are sanctioned by applicable U.S., Utah, or other applicable laws and regulations; (3) there is a market for any cryptocurrency mined by Customer or that any cryptocurrency mined will be salable on any particular terms or price. Customer is solely responsible for custody of any cryptocurrency mined, management or participation in any mining pools or other associations, and any other aspects of Customer's business, and holds TDC harmless for any losses that may occur to Customer, and indemnifies and agrees to defend TDC against any third party losses that occur, as a result of fraud by any party, cybersecurity issues or breaches, data loss, changes to blockchain governance or code, changes to mining software or firmware, hardware defects, hardware maintenance requirements, changes to applicable laws or regulations, equipment failures, market events or conditions, cryptocurrency exchange issues, and so on and so forth.



**Section 5. Technical Support.** TDC will use commercially reasonable efforts to assist Customer, through Customer's authorized contacts, with setting up and configuring the Services, having access to the Services and other issues related to the Services. We may rely on contacts authorized by Customer in writing in providing information, changes or technical support pursuant to the Agreement and are not required to respond to requests from others. For more information, visit the technical support page of TDC's website. TDC's technical support response time depends on the complexity of the inquiry and support request volume.

**Section 6. Physical Access to Facilities.** TDC does not provide badge access to physical facilities for cryptocurrency mining hardware colocation customers. Generally, mining customer access will be provided to a third party manager who will have the right to access of TDC facilities on Customer's behalf. Other access to facilities may be granted on request or by appointment, but subject exclusively to the availability of TDC personnel and in the sole discretion of TDC.

**Section 7. Management – All Services.**

7.1. **Custom Configuration.** Requests for modification to the standard configuration of the Services will be considered on a case-by-case basis. Approval of such modifications will be at TDC's sole discretion. TDC does not guarantee any particular result from non-standard configurations nor can it be held liable in any way for Service performance changes or failures which result from non-standard configurations.

7.2. **Additional Services.** For tasks that cannot be performed through the administrative control panel, Customer may request that TDC perform professional services on a time and materials basis. The request must include a detailed description of work and the authorized amount of time, in half hour increments, to perform the work. TDC may evaluate and revise the request (including the estimated number of hours to perform the work) and reserves the right, in its sole discretion, to decline any request. Any additional services will be performed at TDC's standard published rates, provided that any emergency services that require commencement within 24 hours will be charged at one and a half times (1.5x) TDC's standard published rate. TDC will use commercially reasonable efforts to perform requested additional services. However, it does not guarantee any particular result from performance of additional services or make any representations or warranties regarding such additional services nor can it be held liable in any way (including for any credits) for Service performance changes or failures which result from performing tasks requested by Customer. TDC may require a separate agreement for any of these additional services.

**Section 8. Maintenance.**

8.1. **Scheduled Maintenance.** In order to maintain performance, TDC performs Scheduled Maintenance within its published maintenance windows. This may require that specific Services be suspended during the maintenance period. Loss of Service Availability due to Scheduled Maintenance is not deducted in calculating Service Availability. TDC will use commercially reasonable efforts to notify Customer in advance of any Scheduled Maintenance that may adversely affect Customer's use of the Services.

8.2. **Emergency Maintenance.** TDC may need to perform emergency maintenance, including security patch installation and hardware replacement. TDC will not be able to provide Customer with advanced notice of emergency maintenance. Loss of Service Availability due to emergency maintenance is not deducted in calculating Service Availability.

**Section 9. Certain Limitations – All Services.** TDC does not guarantee compatibility of the Services with any specific customer configuration of hardware or software. Customer is encouraged to discuss any technical and compatibility issues with our technical support personnel.

END OF SERVICE LEVEL AGREEMENT

Handwritten signature and date: 6/6/2022