

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended July 31, 2002

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 0-22823

QAD Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation
or organization)

77-0105228

(I.R.S. Employer Identification No.)

6450 Via Real, Carpinteria, California 93013

(Address of principal executive offices)

(805) 684-6614

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐.

The number of shares outstanding of the issuer's common stock as of the close of business on August 30, 2002, was 34,454,285.

QAD INC.

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PART 1

ITEM 1—FINANCIAL STATEMENTS

QAD INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(Unaudited)

(In thousands, except share data)

	July 31, 2002	January 31, 2002
Assets		
Current assets:		
Cash and equivalents	\$ 53,251	\$ 50,782
Accounts receivable, net	39,142	59,714
Other current assets	12,893	11,535
Total current assets	105,286	122,031
Property and equipment, net	21,055	20,512
Capitalized software development costs, net	2,664	2,963
Other assets, net	11,711	12,503
Total assets	\$ 140,716	\$ 158,009
Liabilities and stockholders' equity		
Current liabilities:		
Current portion of long-term debt	\$ 1,748	\$ 2,157
Accounts payable	7,839	10,069
Accrued expenses	25,502	28,299
Deferred revenue and other	56,962	58,854
Total current liabilities	92,051	99,379
Long-term debt	14,475	15,345
Other deferred liabilities	713	633
Minority interest	415	516
Stockholders' equity:		
Preferred stock, \$0.001 par value. Authorized 5,000,000 shares; none issued and outstanding	—	—
Common stock, \$0.001 par value. Authorized 150,000,000 shares; issued and outstanding 34,440,785 and 34,253,314 shares at July 31, 2002 and January 31, 2002, respectively	34	34
Additional paid-in-capital	115,395	114,911
Accumulated deficit	(75,248)	(65,595)

Accumulated other comprehensive loss	(7,119)	(7,214)
Total stockholders' equity	33,062	42,136
Total liabilities and stockholders' equity	\$ 140,716	\$ 158,009

See accompanying notes to condensed consolidated financial statements.

QAD INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

(In thousands, except per share data)

	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Revenue:				
License fees	\$ 11,204	\$ 13,729	\$ 23,153	\$ 28,837
Maintenance and other	26,372	26,357	51,690	52,107
Services	7,702	10,090	14,755	21,026
Total revenue	45,278	50,176	89,598	101,970
Costs and expenses:				
Cost of license fees	1,756	2,550	3,720	5,496
Other cost of revenue	15,586	19,744	31,630	39,695
Sales and marketing	16,433	14,904	32,337	29,774
Research and development	8,877	8,248	17,213	15,737
General and administrative	5,503	5,681	11,106	11,497
Amortization of intangibles from acquisitions	295	984	577	1,990
Total costs and expenses	48,450	52,111	96,583	104,189
Operating loss	(3,172)	(1,935)	(6,985)	(2,219)
Other (income) expense:				
Interest income	(217)	(456)	(416)	(827)
Interest expense	387	590	869	1,369
Other (income) expense, net	316	(22)	564	175
Total other (income) expense	486	112	1,017	717
Loss before income taxes and cumulative effect of accounting change	(3,658)	(2,047)	(8,002)	(2,936)
Income tax expense	300	300	600	1,100
Loss before cumulative effect of accounting change	(3,958)	(2,347)	(8,602)	(4,036)
Cumulative effect of accounting change	—	—	1,051	—
Net loss	\$ (3,958)	\$ (2,347)	\$ (9,653)	\$ (4,036)
Basic and diluted net loss per share:				
Before cumulative effect of accounting change	\$ (0.12)	\$ (0.07)	\$ (0.25)	\$ (0.12)
Cumulative effect of accounting change	—	—	(0.03)	—
Basic and diluted net loss per share	\$ (0.12)	\$ (0.07)	\$ (0.28)	\$ (0.12)

QAD INC.**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(Unaudited)****(In thousands)**

	Six Months Ended July 31,	
	2002	2001
Net cash provided by operating activities	\$ 6,786	\$ 16,206
Cash flows from investing activities:		
Purchase of property and equipment	(3,766)	(1,686)
Investment in software development	(885)	(469)
Other, net	21	—
Net cash used in investing activities	(4,630)	(2,155)
Cash flows from financing activities:		
Reduction of notes payable	(1,279)	(2,587)
Issuance of common stock for cash	484	470
Net cash used in financing activities	(795)	(2,117)
Effect of exchange rates on cash and equivalents	1,108	(202)
Net increase in cash and equivalents	2,469	11,732
Cash and equivalents at beginning of period	50,782	36,500
Cash and equivalents at end of period	\$ 53,251	\$ 48,232

See accompanying notes to condensed consolidated financial statements.

QAD INC.**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS****(Unaudited)****1. BASIS OF PRESENTATION**

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments necessary to present fairly the financial information contained therein. These statements do not include all disclosures required by accounting principles generally accepted in the United States for annual financial statements and should be read in conjunction with the audited financial statements and related notes included in our Annual Report on Form 10-K for the year ended January 31, 2002. The results of operations for the three and six months ended July 31, 2002 are not necessarily indicative of the results to be expected for the year ending January 31, 2003.

Certain prior period balances have been reclassified to conform to current period presentation.

2. RECENT ACCOUNTING PRONOUNCEMENTS

On February 1, 2002, we adopted Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" (SFAS 142). Among other things, SFAS 142 requires that goodwill and intangible assets with indefinite useful lives no longer be amortized, but instead be tested for impairment at least annually in accordance with its provisions. SFAS 142 also requires that intangible assets with definite useful lives be amortized over their respective estimated useful lives and reviewed for impairment in accordance with SFAS 144.

SFAS 142 also requires an assessment of whether there is an indication that goodwill is impaired as of the date of adoption. We have up to six months from that date to determine the fair value of each reporting unit and compare it to the reporting unit's carrying amount. If an indication exists that the reporting unit's goodwill may be impaired, the implied fair value of the reporting unit's goodwill must be compared to its carrying

amount. This comparison is required to be completed as soon as possible, but no later than the end of the year of adoption. Any transitional impairment loss is to be recognized as the cumulative effect of a change in accounting principle in our consolidated statement of operations. Upon adoption of SFAS 142, we recognized a \$1.1 million impairment charge related to goodwill that is reflected as a cumulative effect of accounting change in the Condensed Consolidated Statement of Operations for the six months ended July 31, 2002. For further discussion related to SFAS 142, see note 5 within these Notes to Condensed Consolidated Financial Statements.

Effective February 1, 2002, we adopted Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). Among other things, SFAS 144 supersedes SFAS 121. However, SFAS 144 retains the fundamental provisions of SFAS 121 for recognizing and measuring impairment losses on long-lived assets held for use and long-lived assets to be disposed of by sale, while also resolving significant implementation issues associated with SFAS 121. Unlike SFAS 121, an impairment assessment under SFAS 144 will never result in a write-down of goodwill. Rather, goodwill is evaluated for impairment under SFAS 142. The adoption of SFAS 144 did not have a material impact on our financial statements.

Also effective February 1, 2002, we adopted Financial Accounting Standards Board Emerging Issues Task Force No. 01-14, "Income Statement Characterization of Reimbursements Received for Out-of-Pocket Expenses Incurred" (EITF 01-14). EITF 01-14 requires companies to characterize reimbursements received for out-of-pocket expenses incurred as revenue in the statement of operations. Comparative financial statements for prior periods include reclassifications to comply with the guidance of this announcement. The adoption of this EITF does not affect net income or loss in any past or future period, but will increase both services revenue and other cost of revenue equally. Adoption of

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EITF 01-14 did not have a material impact on our total gross margin percentage. In implementing EITF 01-14, we recharacterized reimbursements received for out-of-pocket expenses incurred as revenue in the amount of \$0.3 million and \$0.7 million for the three and six months ended July 31, 2002 and \$0.6 million and \$1.1 million for the three and six months ended July 31, 2001, respectively.

3. COMPREHENSIVE LOSS

Comprehensive loss includes changes in the balances of items that are reported directly in a separate component of stockholders' equity on the Condensed Consolidated Balance Sheets. The components of comprehensive loss are as follows:

(In thousands)	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Net loss	\$ (3,958)	\$ (2,347)	\$ (9,653)	\$ (4,036)
Foreign currency translation adjustments	(170)	(306)	95	(2,347)
Comprehensive loss	\$ (4,128)	\$ (2,653)	\$ (9,558)	\$ (6,383)

4. PER SHARE INFORMATION

The following table sets forth the computation of basic and diluted net loss per share:

(In thousands, except per share data)	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Net loss	\$ (3,958)	\$ (2,347)	\$ (9,653)	\$ (4,036)
Weighted average shares of common stock outstanding	34,400	34,024	34,353	33,947
Weighted average shares of common stock equivalents issued using the treasury stock method	—	—	—	—
Weighted average shares of common stock and common stock equivalents outstanding	34,400	34,024	34,353	33,947
Basic and diluted loss per share	\$ (0.12)	\$ (0.07)	\$ (0.28)	\$ (0.12)

Common stock equivalent shares consist of the shares issuable upon the exercise of stock options and warrants using the treasury stock method. Shares of common stock equivalents of approximately 181,000 and 333,000 for the three and six months ended July 31, 2002 and 363,000 and 315,000 for the three and six months ended July 31, 2001, respectively, were not included in the diluted calculation because they were anti-dilutive. Due to the net loss for the three and six months ended July 31, 2002 and 2001, basic and diluted per share amounts are the same for each respective period.

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5. GOODWILL AND INTANGIBLE ASSETS

Acquired Intangible Assets

(In thousands)	July 31, 2002	January 31, 2002
Amortizable Intangible Assets (various, principally customer contracts)	\$ 9,255	\$ 8,684
Less: accumulated amortization	(7,817)	(6,786)
Net amortizable intangible assets	\$ 1,438	\$ 1,898

The increase in amortizable intangible assets from January 31, 2002 to July 31, 2002 is due to the impact of foreign currency translation. As of January 31, 2002 and July 31, 2002, we had no intangible assets that were determined to have indefinite useful lives, and therefore were not subject to amortization. The aggregate amortization expense related to amortizable intangible assets was \$0.3 million and \$0.6 million for the three and six months ended July 31, 2002 and \$0.7 million and \$1.4 million for the three and six months ended July 31, 2001, respectively.

The estimated remaining amortization expense related to amortizable intangible assets for the years ended January 31, 2003, 2004 and 2005 is \$0.5 million, \$0.7 million and \$0.2 million, respectively. No additional amortization is estimated in fiscal year 2006 and thereafter.

Goodwill

For the applicable reporting units, the changes in the carrying amount of goodwill for the six months ended July 31, 2002, were as follows (reporting unit regions are defined in note 7 within these Notes to Condensed Consolidated Financial Statements):

(In thousands)	EMEA	Asia Pacific	Latin America	Total
Balances, February 1, 2002	\$ 6,325	\$ 1,036	\$ 966	\$ 8,327
Impairment loss	—	(1,051)	—	(1,051)
Impact of foreign currency translation	716	15	(70)	661
Balances, July 31, 2002	\$ 7,041	\$ —	\$ 896	\$ 7,937

In connection with the adoption of SFAS 142 on February 1, 2002, all reporting units were valued and tested for impairment where applicable. The fair value of the Asia Pacific reporting unit was determined using a discounted cash flow approach. The impairment loss recorded for Asia Pacific relates to anticipated trends in this reporting unit as the recovery of the manufacturing sector tends to lag behind the other regions. In accordance with the transition provisions of SFAS 142, the 2003 fiscal first quarter \$1.1 million impairment loss related to Asia Pacific goodwill was recorded as a cumulative effect of accounting change and is included in our Condensed Consolidated Statement of Operations for the six months ended July 31, 2002.

For comparability, the following table assumes that SFAS 142 was adopted on February 1, 2001. The table adjusts net loss before cumulative effect of accounting change for amortization expense related to goodwill.

(In thousands, except per share data)	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Loss before cumulative effect of accounting change	\$ (3,958)	\$ (2,347)	\$ (8,602)	\$ (4,036)
Adjustments to net loss:				
Goodwill amortization	—	285	—	576
Adjusted net loss before cumulative effect of accounting change	\$ (3,958)	\$ (2,062)	\$ (8,602)	\$ (3,460)
Basic and diluted net loss per share:				
Net loss before cumulative effect of accounting change	\$ (0.12)	\$ (0.07)	\$ (0.25)	\$ (0.12)
Goodwill amortization	—	0.01	—	0.02
Adjusted net loss before cumulative effect of accounting change	\$ (0.12)	\$ (0.06)	\$ (0.25)	\$ (0.10)

6. RESTRUCTURING CHARGE

In the past, we have implemented restructuring programs designed to strengthen operations and financial performance. Applicable charges and adjustments related to restructurings are included in costs and expenses in our Condensed Consolidated Statements of Operations. Below is a discussion of the active restructuring programs as of July 31, 2002.

During fiscal year 2001, we undertook several initiatives to strengthen operating and financial performance by sharpening the focus of our e-business and business intelligence solutions for multi-national customers. The related actions resulted in a \$5.1 million charge taken in the third quarter of fiscal year 2001 and included facility consolidations (\$1.0 million), a reduction of approximately 150 employees, contractors and consultants across most regions and functions (\$2.2 million) and associated asset write-downs (\$1.9 million). As of July 31, 2002, \$4.0 million of this charge was utilized and \$1.0 million was adjusted downwards because employee termination costs were lower than originally estimated. We expect to pay the remaining balance of \$0.1 million, primarily consisting of lease obligations, by the end of fiscal 2007.

During fiscal year 2002, we continued our fiscal year 2001 initiative resulting in a \$0.7 million and \$0.4 million charge in the second quarter and fourth quarter, respectively. These charges primarily related to the reduction of office space in three of our North American locations. In addition, during fiscal year 2002, we recorded adjustments of \$0.7 million and \$0.3 million to the Statement of Operations in the second quarter and third quarter, respectively. These adjustments, totaling \$1.0 million, were to the fiscal year 2001 restructuring accrual noted above. As of July 31, 2002, of the combined \$1.1 million fiscal year 2002 restructuring charges, \$0.5 million had been utilized. The remaining balance of \$0.6 million related to lease obligations is expected to be paid through fiscal year 2007.

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The following table presents the restructuring activities through July 31, 2002, resulting from each of the aforementioned programs:

(In thousands)	Lease Obligations	Employee Termination Costs	Total Restructuring
Balances, January 31, 2002	\$ 984	\$ 31	\$ 1,015
Fiscal year 2003 activity:			
Utilization	(345)	—	(345)
Balances, July 31, 2002	\$ 639	\$ 31	\$ 670

7. BUSINESS SEGMENT INFORMATION

QAD operates in geographic regions. The North America region includes the United States and Canada. The EMEA region includes Europe, the Middle East and Africa. The Asia Pacific region includes Asia and Australia. The Latin America region includes South America, Central America and Mexico.

Operating income attributable to each business segment is based upon management's assignment of revenue and costs. Regional cost of revenue includes the cost of goods produced by QAD manufacturing operations at the price charged to the distribution operation. Income from manufacturing operations and research and development costs are included in the Corporate operating segment. Identifiable assets are assigned by region based upon the location of each legal entity.

Revenue for the three and six months ended July 31, 2001, has been restated to comply with the guidance of EITF 01-14 regarding the characterization of reimbursements received for out-of-pocket

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expenses. For further discussion of EITF 01-14, see note 2 within these Notes to Condensed Consolidated Financial Statements.

(In thousands)	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Revenue:				
North America	\$ 18,916	\$ 19,122	\$ 37,558	\$ 39,502
EMEA	15,810	18,582	30,042	38,203
Asia Pacific	7,518	9,816	15,776	18,887
Latin America	3,034	2,656	6,222	5,378
	\$ 45,278	\$ 50,176	\$ 89,598	\$ 101,970
Operating income (loss):				
North America	\$ 2,565	\$ 3,095	\$ 4,844	\$ 5,685
EMEA	(819)	(569)	(2,409)	(1,025)
Asia Pacific	(1,382)	(2,048)	(2,556)	(3,294)
Latin America	(501)	(958)	(1,026)	(1,914)

Corporate	(3,035)	(1,455)	(5,838)	(1,671)
	<u>\$ (3,172)</u>	<u>\$ (1,935)</u>	<u>\$ (6,985)</u>	<u>\$ (2,219)</u>
			July 31, 2002	January 31, 2002
Identifiable assets:				
North America		\$	67,557	\$ 72,889
EMEA			44,694	53,888
Asia Pacific			23,617	26,167
Latin America			4,848	5,065
		\$	140,716	\$ 158,009

8. SUBSEQUENT EVENT

In August 2002, we announced the implementation of a cost reduction program aimed at reducing annualized operating expenses in order to better align expenses with current business levels. In connection with this program, we expect to report a restructuring charge of approximately \$2 to \$3 million in the 2003 fiscal third quarter, consisting primarily of employee termination costs occurring across all regions and most functions.

ITEM 2—MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS

In addition to historical information, this Quarterly Report on Form 10-Q contains forward-looking statements. These statements typically are preceded or accompanied by words like "believe," "anticipate," "expect" and words of similar meaning. These forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those reflected in these forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as other factors detailed in our Annual Report on Form 10-K for the year ended January 31, 2002. These include, but are not limited to, evolving demand for the company's software products and products that operate with the company's products, the publication of opinions by industry analysts about the company, its products and technology, the entry of new competitors and their technological advances, delays in localizing the company's products for new markets, delays in sales as a result of lengthy sales cycles, changes in operating expenses, pricing, timing of new product releases, the method of product distribution or product mix and general economic factors. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's opinions only as of the date hereof. In addition, revenue and earnings in the enterprise resource planning (ERP), e-business and collaborative commerce software industries are subject to fluctuations. Investors should not use any one quarter's results as a benchmark for future growth. We undertake no obligation to revise, update or publicly release the results of any revision or update to these forward-looking statements. Readers should carefully review the risk factors described in other documents we file from time to time with the Securities and Exchange Commission.

The following discussion should be read in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q.

CRITICAL ACCOUNTING POLICIES

We consider certain accounting policies related to revenue recognition, accounts receivable allowances, impairment of long-lived assets and valuation of deferred tax assets to be critical policies due to the estimation processes and management's judgment involved in each.

- Revenue Recognition.** QAD licenses its software under non-cancelable license agreements including third-party software sold in conjunction with QAD software, provides customer support and provides services including technical, implementation and training. Revenue is recognized in accordance with Statement of Position (SOP) No. 97-2, "Software Revenue Recognition," as modified by SOP No. 98-9, "Modification of SOP No. 97-2, Software Revenue Recognition with Respect to Certain Transactions" and Staff Accounting Bulletin (SAB) No. 101, "Revenue Recognition in Financial Statements." Our revenue recognition policy is as follows:

License Revenue. We recognize revenue from license contracts when a non-cancelable, non-contingent license agreement has been signed, the software product has been delivered, no uncertainties exist surrounding product acceptance, fees from the agreement are fixed and determinable, and collection is probable. We use the residual method to recognize revenue when a license agreement includes one or more elements to be delivered at a future date if evidence of the fair value of all undelivered elements exists. If evidence of the fair value of the undelivered elements does not exist, revenue is deferred and recognized when delivery occurs. Certain judgments affect the application of our license revenue recognition policy, such as the assessment of collectibility for which we review a customer's credit worthiness and our historical experience with that customer, if applicable.

Maintenance Revenue. Revenue from ongoing customer support and product updates is recognized ratably over the term of

the maintenance period, which in most instances is one year.

Services Revenue. Revenue from technical and implementation services is recognized as the services are performed for the time-and-materials contracts. Revenue from training services is recognized as the services are performed.

We believe that we are currently in compliance with SOP No. 97-2, SOP No. 98-9 and SAB No. 101. However, the accounting profession continues to discuss various provisions of these guidelines with the objective of providing additional guidance on their future application. These discussions and the issuance of new interpretations, once finalized, could lead to unanticipated changes in revenue recognition. They could also drive significant adjustments to our business practices that could result in increased administrative costs, lengthened sales cycles and other changes that could affect our results of operations.

- *Accounts Receivable Allowances.* We review the collectibility of our accounts receivable each period by analyzing balances based on age and record specific allowances for any balances that we determine may not be fully collectible. We also provide an additional reserve based on historical data including analysis of credit memo data and other known factors. These determinations require management's judgment. Actual collection of these balances may differ due to global or regional economic factors, challenges faced by customers within our targeted vertical markets or specific financial difficulties of individual customers.
- *Impairment of Long-Lived Assets and Valuation of Deferred Tax Assets.* Our long-lived assets include goodwill, intangibles, deferred taxes and other assets. At July 31, 2002, we had \$9.4 million of goodwill and other intangible assets, and \$0.3 million of net deferred tax assets, current and non-current, which when combined account for approximately 7% of our total assets. In assessing the recoverability of our intangibles, excluding goodwill, we must make assumptions regarding estimated future cash flows to support the carrying value of the respective assets. If these estimates or their related assumptions change in the future, we may be required to record impairment charges for these assets not previously recorded. Effective February 1, 2002, we adopted Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" (SFAS 142) which requires us to analyze goodwill for impairment issues during the first six months of fiscal year 2003, and then on a periodic basis thereafter. Upon adoption of SFAS 142, we recognized a \$1.1 million impairment charge related to goodwill that is reflected as a cumulative effect of accounting change in the Condensed Consolidated Statements of Operations for the six months ended July 31, 2002. For a further discussion of SFAS 142, see note 2 within the Notes to Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes", requires that the carrying value of our net deferred tax assets reflects an amount that is more likely than not to be realized. In assessing the likelihood of realizing tax benefits associated with deferred tax assets and the need for a valuation allowance, we consider estimated future taxable income and tax planning strategies that are both prudent and feasible. Should we determine that it is more likely than not that we would be able to realize deferred tax assets in the future in excess of the net recorded amount, an adjustment to deferred tax assets would decrease tax expense in the period such determination was made. Likewise, should we determine that it is more likely than not that we would not be able to realize all or part of the net deferred tax asset in the future, an adjustment to deferred tax assets would increase tax expense in the period such determination was made.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, the percentage of total revenue represented by certain items reflected in our statements of operations:

	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Revenue:				
License fees	25%	27%	26%	28%
Maintenance and other	58	53	58	51
Services	17	20	16	21
Total revenue	100	100	100	100
Costs and expenses:				
Cost of license fees	4	5	4	5
Other cost of revenue	34	39	35	39
Sales and marketing	36	30	36	29
Research and development	20	17	19	16
General and administrative	12	11	13	11
Amortization of intangibles from acquisitions	1	2	1	2
Total costs and expenses	107	104	108	102
Operating loss	(7)	(4)	(8)	(2)
Other (income) expense	1	—	1	1

Loss before income taxes and cumulative effect of accounting change	(8)	(4)	(9)	(3)
Income tax expense	1	1	1	1
Loss before cumulative effect of accounting change	(9)	(5)	(10)	(4)
Cumulative effect of accounting change	—	—	1	—
Net loss	(9)%	(5)%	(11)%	(4)%

Total Revenue. Total revenue for the second quarter of fiscal year 2003 was \$45.3 million, a decline of \$4.9 million, or 10%, from \$50.2 million in the second quarter of fiscal year 2002. Total revenue for the six months ended July 31, 2002, was \$89.6 million, a decline of 12%, or \$12.4 million, from \$102.0 million in the comparable prior year period. This decrease in total revenue on both a quarter-to-quarter and year-to-year basis was driven by declines in license fees and services revenues while maintenance and other revenue was flat on a quarter-to-quarter basis and declined slightly on a year-to-year basis.

License revenue decreased \$2.5 million to \$11.2 million for the second quarter of fiscal year 2003 from \$13.7 million for the same period last year. For the six months ended July 31, 2002, license revenue was \$23.2 million, a \$5.7 million decline from the same period last year. These declines reflect the continued slowdown in corporate IT spending within our core customer base of manufacturers due to current economic conditions. Maintenance and other revenue was flat to the second quarter of last year at \$26.4 million. Maintenance revenue increased due to growth in our installed base, but was offset by declines in hardware sales. On a year-to-date basis, maintenance and other revenue decreased \$0.4 million to \$51.7 million for the current quarter from \$52.1 million for the first six months of fiscal year 2002 primarily due to declines in hardware revenue, partially offset by increases in maintenance revenue. Second quarter services revenue decreased \$2.4 million when compared to the second quarter

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of last year and declined \$6.3 million for the six months ended July 31, 2002 when compared to the same period last year. The declines in services revenue correlate with the recent license revenue trend.

Total Cost of Revenue. Total cost of revenue (combined cost of license fees and other cost of revenue) as a percentage of total revenue decreased to 38% in the second quarter of fiscal year 2003 from 44% in the second quarter of fiscal year 2002 and on a year-to-date basis decreased to 39% in fiscal year 2003 from 44% in fiscal year 2002. These percentage decreases are primarily the result of the mix of revenues. Maintenance and other revenues increased to 58% of revenues from 53% in the year-ago quarter and to 58% from 51% on a year-to-date basis, offset by a lower proportion of services revenues, which carries a lesser gross margin than license and maintenance revenue. In addition, in the first quarter of fiscal year 2003, the company terminated a third party royalty contract, which resulted in a one-time benefit of approximately \$600,000, which represents a less than 1% improvement to the gross margin percentage on a year-to-date basis.

Sales and Marketing. Sales and marketing expense increased 10% to \$16.4 million for the second quarter of fiscal year 2003 from \$14.9 million in the comparable prior year period. On a current year-to-date basis, sales and marketing expense increased \$2.6 million or 9% to \$32.3 million compared to the first six months of fiscal year 2002. The increase in spending was primarily due to increased personnel costs and marketing efforts including a higher level of net expense in the current year for our annual Explore User Conference.

Research and Development. Research and development expense was \$8.9 million for the second quarter of fiscal year 2003, up from \$8.2 million in the second quarter of fiscal year 2002. During the six months ended July 31, 2002, research and development expense increased \$1.5 million to \$17.2 million from \$15.7 million in the same prior year period. These increases were primarily due to increased personnel expenses related to our continued investment in the development of our new and existing products.

General and Administrative. General and administrative expense remained relatively flat at \$5.5 million and \$5.7 million for the second quarter of fiscal year 2003 and 2002, respectively. In the six months ended July 31, 2002, general and administrative expense was also relatively flat at \$11.1 million from \$11.5 million in the same prior year period.

Amortization of Intangibles from Acquisitions. Amortization of intangibles from acquisitions was down \$0.7 million at \$0.3 million for the current quarter when compared to the same quarter last year and down \$1.4 million from \$2.0 million last year to \$0.6 million on a current year-to-date basis, because certain intangibles are now fully amortized and due to the discontinued amortization of goodwill with our adoption of SFAS 142 last quarter.

Operating Expenses. Operating expenses include sales and marketing, research and development, general and administrative, and amortization of intangibles from acquisitions. In total, these expenses were up \$1.3 million at \$31.1 million for the current quarter when compared to last year for the reasons described above. During the six months ended July 31, 2002 operating expenses increased \$2.2 million to \$61.2 million from \$59.0 million in the same prior year period. Payroll expenses, overall, were down from last year. While support, services and general and administrative payroll expenses have declined, sales and marketing, and research and development payroll expenses have increased. It should also be noted that during the first quarter of fiscal year 2003 we adjusted the discretionary component of the fiscal year 2002 bonus pool, resulting in a \$0.6 million benefit, of which \$0.5 million related to operating expenses and \$0.1 million related to cost of revenue.

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In August 2002, we announced the implementation of a cost reduction program aimed at reducing annualized operating expenses in order to better align expenses with current business levels. In connection with this program, we expect to report a restructuring charge of approximately \$2 to \$3 million in the 2003 fiscal third quarter, consisting primarily of employee termination costs occurring across all regions and most functions.

Income Taxes. We recorded income tax expense of \$0.3 million for the second quarter of both fiscal years 2003 and 2002 and \$0.6 million

and \$1.1 million for the six months ended July 31, 2002 and 2001, respectively. These amounts include taxes in jurisdictions that were profitable during these periods. We have not provided a benefit for the jurisdictions in loss positions due to management's determination regarding the uncertainty of the realization of these benefits.

Cumulative Effect of Accounting Change. In the first quarter of fiscal year 2003, we adopted SFAS 142 related to impairment tests for goodwill, resulting in the reporting of a cumulative effect of a change in accounting principle of \$1.1 million. For further discussion of SFAS 142, see note 2 within the Notes to Condensed Consolidated Financial Statements included elsewhere in this Quarterly Report on Form 10-Q.

PRO FORMA FINANCIAL RESULTS

Pro forma information is provided below to assist in evaluating our performance on a more consistent year-to-year basis. However, pro forma information should not be considered in isolation or as a substitute for net loss or other information prepared in accordance with accounting principles generally accepted in the United States. Pro forma amounts have been adjusted to exclude amortization of intangibles from acquisitions and a cumulative effect of accounting change related to goodwill. Pro forma adjustments are detailed below in a reconciliation from net loss calculated in accordance with accounting principles generally accepted in the United States to pro forma net loss.

(In thousands, except per share data)	Three Months Ended July 31,		Six Months Ended July 31,	
	2002	2001	2002	2001
Reconciliation of net loss to pro forma net loss:				
Net loss	\$ (3,958)	\$ (2,347)	\$ (9,653)	\$ (4,036)
Adjustments to net loss:				
Amortization of intangibles from acquisitions	295	984	577	1,990
Cumulative effect of accounting change	—	—	1,051	—
Pro forma net loss	\$ (3,663)	\$ (1,363)	\$ (8,025)	\$ (2,046)
Pro forma basic and diluted net loss per share	\$ (0.11)	\$ (0.04)	\$ (0.23)	\$ (0.06)
Pro forma basic and diluted weighted shares	34,400	34,024	34,353	33,947

LIQUIDITY AND CAPITAL RESOURCES

We have historically financed our operations and met our capital expenditure requirements through cash flows from operations, sale of equity securities and borrowings. Cash and equivalents were \$53.3 million and \$50.8 million at July 31, 2002, and January 31, 2002, respectively. We had working capital of \$13.2 million as of July 31, 2002, compared to \$22.7 million as of January 31, 2002. The decline primarily relates to a reduction in accounts receivable, partially offset by an increase in cash and decreases in accounts payable and other accrued expenses.

Accounts receivable, net of allowances, declined to \$39.1 million at July 31, 2002, from \$59.7 million at January 31, 2002, primarily because collections have exceeded billings, due to the high volume of annual maintenance renewal billings processed in the fourth quarter and collected in the subsequent fiscal year. Accounts receivable days sales outstanding, using the countback method, increased to 85 days as of July 31, 2002, compared to 75 days at January 31, 2002, due to slower customer payments in this economic environment.

Net cash provided by operating activities was \$6.8 million and \$16.2 million for the six months ended July 31, 2002 and 2001, respectively. The year-over-year change relates mainly to a larger net loss in the current year and a continued decrease in other accrued expenses.

Net cash used in investing activities was \$4.6 million and \$2.2 million for the six months ended July 31, 2002 and 2001, respectively, and related primarily to the purchase of property and equipment. During the second quarter of fiscal year 2003, we commenced construction of a new company headquarters on property owned by QAD in Summerland, California, a neighboring community to our existing headquarters in Carpinteria, California. A primary motivation for this activity is to consolidate QAD Santa Barbara area operations. The current construction schedule is set to complete the effort so that it coincides with the lease termination of the existing company headquarters in nearby Carpinteria, California. Another significant motivation for this effort is that the current entitlement under the California Development Plan for the project will expire August 2003. However, we may be eligible to receive up to a one-year extension for this entitlement if substantial continuous construction is in progress. The Board of Directors has approved expenditures up to \$3.5 million for the initial phases of these construction activities, including architectural design, demolition, excavation and grading.

The preliminary construction budget is approximately \$20 million and would be funded through a combination of cash and additional debt financing. In July 2002, we obtained a commitment from Santa Barbara Bank and Trust to finance a maximum of \$18 million, subject to usual and customary due diligence by the bank. QAD may cancel this commitment at any time prior to funding of the loan, subject to a non-refundable commitment fee of \$45,000. Funding of the loan, if approved by the Board of Directors, is expected by the end of fiscal year 2003. This commitment would require QAD to guarantee the construction financing and to repay the existing loan of \$4.4 million encumbering the site. In total, the conditions of the loan would require QAD to contribute approximately \$7 million in cash based on the preliminary budget. We expect to generate a portion of our cash contribution from the sale of another parcel of property located in Carpinteria, California.

Net cash used in financing activities totaled \$0.8 million and \$2.1 million for the six months ended July 31, 2002 and 2001, respectively, and was comprised of repayments of borrowings and proceeds from the issuance of common stock.

We maintain a five-year senior credit facility with Foothill Capital Corporation (the Facility). The Facility provides that we will maintain certain financial and operating covenants which include, among other provisions, maintaining minimum 12 month trailing earnings before interest, taxes, depreciation and amortization (EBITDA) and minimum tangible net worth. These covenants were renegotiated during the second quarter of fiscal

year 2003. At July 31, 2002, we were in compliance with the renegotiated covenants. The Facility currently provides that the term loan shall be repaid in quarterly principal installments ranging from \$375,000 to \$750,000 based on our aggregate unrestricted cash and equivalents balance at the end of each quarter.

We believe that the cash on hand, net cash provided by operating activities and the expected available borrowings under our credit facility and anticipated construction loan will provide us with

sufficient resources to meet our current and long-term working capital requirements, construction requirements, debt service and other cash needs.

RECENT ACCOUNTING STANDARDS

In July 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS 146). SFAS 146 nullifies EITF Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)." It requires that a liability be recognized for those costs only when the liability is incurred, that is, when it meets the definition of a liability in the FASB's conceptual framework. SFAS 146 also establishes fair value as the objective for initial measurement of liabilities related to exit or disposal activities. SFAS 146 is effective for exit or disposal activities that are initiated after December 31, 2002, with earlier adoption encouraged. We do not expect that the adoption of SFAS 146 will have a material impact on our financial position or results from operations.

ITEM 3—QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Exchange. For the six months ended July 31, 2002 and 2001, approximately 30% and 35%, respectively, of our revenue was denominated in foreign currencies. We also incur a significant portion of our expenses in currencies other than the United States dollar. As a result, fluctuations in the values of the respective currencies relative to the currencies in which we generate revenue could adversely impact our results.

Fluctuations in currencies relative to the United States dollar have affected and will continue to affect period-to-period comparisons of our reported results of operations. For the six months ended July 31, 2002 and 2001, foreign currency transaction losses totaled \$0.6 million and \$0.4 million, respectively. Due to constantly changing currency exposures and the volatility of currency exchange rates, we may experience currency losses in the future, and we cannot predict the effect of exchange rate fluctuations upon future operating results. Although we do not currently undertake hedging transactions, we may choose to hedge a portion of our currency exposure in the future, as we deem appropriate.

Interest Rates. We invest our surplus cash in a variety of financial instruments, consisting principally of bank time deposits and short-term marketable securities with maturities of less than one year. Our investment securities are held for purposes other than trading. Cash balances held by subsidiaries are invested in short-term time deposits with the local operating banks. Additionally, our short-term and long-term debt bears interest at variable rates.

We prepared sensitivity analyses of our interest rate exposure and our exposure from anticipated investment and borrowing levels for fiscal year 2003 to assess the impact of hypothetical changes in interest rates. Based upon the results of these analyses, a 10% adverse change in interest rates from the 2002 fiscal year-end rates would not have a material adverse effect on the fair value of investments and would not materially impact our results of operations or financial condition for fiscal year 2003.

PART II

ITEM 4—SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

At the annual meeting of stockholders held on June 6, 2002, the following proposals were adopted:

- (1) To elect two directors to hold office for a term of three years until the annual meeting of stockholders in the year 2005 (Class I Directors):

	Votes For	Votes Withheld
Jeffrey A. Lipkin	31,822,265	482,404
A.J. "Bert" Moyer	31,819,265	485,404

- (2) To ratify the appointment of KPMG LLP as the Company's independent auditors for the Company's 2003 fiscal year:

Votes For	Votes Against	Abstentions
32,243,709	50,227	10,733

ITEM 6—EXHIBITS AND REPORTS ON FORM 8-K

- a) Exhibits

- 10.1 Architectural Services Agreement between the Registrant and Lenvik & Minor Architects dated May 29, 2002.
- 10.2 Master Services Agreement between the Registrant and Equant, Inc. dated June 6, 2002. (†)
- 10.3 Consulting Agreement between the Registrant and Ove Arup & Partners California dated June 12, 2002.
- 10.4 Second Amendment to the Loan and Security Agreement between the Registrant and Foothill Capital Corporation dated July 31, 2002.
- 99.1 Certification by the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.2 Certification by the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(†) Certain portions of exhibit have been omitted based upon a request for confidential treatment. The omitted portions have been separately filed with the Securities and Exchange Commission.

b) Reports on Form 8-K

No reports on Form 8-K were filed during the six months ended July 31, 2002.

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Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

QAD Inc.
(Registrant)

Date: September 13, 2002

By: /s/ KATHLEEN M. FISHER

Kathleen M. Fisher
Chief Financial Officer
(on behalf of the registrant)

By: /s/ VALERIE J. MILLER

Valerie J. Miller
Chief Accounting Officer
(Principal Accounting Officer)

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CERTIFICATIONS

I, Karl F. Lopker, certify that:

1. I have reviewed this quarterly report on Form 10-Q of QAD Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report.

Date: September 13, 2002

/s/ KARL F. LOPKER

Karl F. Lopker
Chief Executive Officer
QAD Inc.

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CERTIFICATIONS

I, Kathleen M. Fisher, certify that:

1. I have reviewed this quarterly report on Form 10-Q of QAD Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report.

Date: September 13, 2002

/s/ KATHLEEN M. FISHER

Kathleen M. Fisher
Chief Financial Officer
QAD Inc.

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Exhibit 10.1

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

[AIA LOGO]

©1997 AIA®
AIA DOCUMENT B151-1997
ABBREVIATED OWNER-ARCHITECT
AGREEMENT

The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

1997 Edition - Electronic Format

AIA Document B151 - 1997

Abbreviated Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 29th of May in the year Two Thousand Two
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)
QAD, Inc.
6450 Via Real
Carpinteria, CA 93013

The Owner has retained Paul Franz Construction, Inc. to act as its representative.

and the Architect:
(Name, address and other information)
Lenvik & Minor Architects
A California Corporation
315 West Haley Street
Santa Barbara, CA 93101

For the following Project:
(Include detailed description of Project)
Proposed R & D office Park for:
QAD Inc. - Phase A (Phase II)
2111 Ortega Hill Road
Summerland, CA 93067
APN: 005-110-001
A one-story "shell" office building with partial basement of approximately 87,000 square feet.

The Owner and Architect agree as follows:

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

- 1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

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- 1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner

shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

1.5 The Architect shall communicate with the Owner's Representative on all aspects of the Project as determined by the Owner and as provided for in Article 4, however, the Architect shall have the right to communicate directly with the Owner. Architect's billings and requests for information shall be directed through the Owner's Representative. The Owner's Representative shall receive all submittals, requests for information, change order requests and application and certificates for payment from the Contractor and shall forward them to the Architect. Owner's instructions to the Architect shall be through the Owner's Representative; provided that in the event of a conflict between instructions from the Owner and instructions from the Owner's Representative, the instructions from the Owner shall govern and prevail.

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services.

2.3 DESIGN DEVELOPMENT PHASE

2.3.2 The Architect shall further develop the Design Development Drawings which have been prepared by Andy Neumann Architect. Those drawings shall further describe the character and detail of the building. The Architect will coordinate and manage the Owner's Consultants which include, Civil, Structural, Mechanical, Electrical and Plumbing Engineers and Landscape Architect. The Architect will work with the Owner's General Contractor (Melchiori Construction Co.) on the project construction budget and scheduling.

2.3.3 The Architect will work with Andy Neumann Architect to faithfully interpret his design intent. The Owner shall retain Andy Neumann Architect as reasonably required to assist the Architect in the performance of his basic services and shall use good faith efforts to cause Andy Neumann Architect to as expeditiously as possible, provide the Architect with all details and designs required to complete the building as envisioned by Andy Neumann Architect.

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2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.1.1 The Architect will coordinate and manage the Owner's Consultants so that their work is made a part of the architectural construction documents.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.4 The Architect shall assist the Owner in connection with the owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

The Architect will assist the Owner's General Contractor in his obtaining bids as part of his negotiated construction contract with the Owner.

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work. See Article 12.7.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect.

2.6.3.1 See Article 1.5 for Architect's responsibility to act on the Owner's behalf only through the Owner's Representative.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall

neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 CERTIFICATES FOR PAYMENT

2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in

the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by

the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and provided the Architect periodically notifies the Owner's Representative, the Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraph 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

4.3 Architect to communicate with Owner's Representative, Paul Franz; Franz will be responsible for obtaining any needed consents from the Owner.

4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services

may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

4.6 The Owner shall furnish the services of consultants when such services are requested by the Architect and are reasonably required by the scope of the Project.

4.6.1 The Owner is furnishing the services of all Consultants including but not limited to, Civil Engineer, Structural Engineer, Mechanical Engineer, Electrical Engineer, Plumbing Engineer and Landscape Architect. The Architect, as part of his basic services, is not providing any Consultants to the project.

4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 5

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights.

6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement.

6.3 Except for the licenses granted in Paragraph 6.2, no other license or right shall be deemed granted or implied under this Agreement. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

6.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

7.1 MEDIATION

7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of The American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.2 ARBITRATION

7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 7.1.

7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

7.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.2.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

ARTICLE 8 TERMINATION OR SUSPENSION

8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, and Owner fails to cure the default within ten (10) calendar days after written notice, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

8.4 This Agreement may be terminated by either party should the other party fail to cure a default within ten (10) calendar days after written notice, through no fault of the party initiating the termination.

8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.

9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of the AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment arising after lender realizes on its collateral.

9.6 This Agreement represents the entire and integrated agreement between the owner and the architect and supersedes all prior negotiations, representations or agreements, either written or

oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement. The term "certification" and "certify" are defined by California law with regard to the Architect's use of those terms.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

10.2 REIMBURSEABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, of the types as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project that is requested by Owner or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultant if authorized by Owner;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.2 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.2 BASIC COMPENSATION

11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages and identify phases to which particular methods of compensation apply, if necessary.)

Compensation shall be a stipulated sum of Four Hundred Ninety Three Thousand, Seven Hundred Dollars (\$493,700).

Compensation for services rendered by Consultants which the Architect may be required by the Owner to retain, as provided for in Article 4.6 shall be based on a multiplier of one point one five (1.15) times the amounts billed by the Consultants to the Architect.

11.2.2 When compensation is based on a stipulated sum Cost, progress payments For Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

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(Insert additional phases as appropriate.)

Design Development Phase:	Eighteen	percent (18%)
Construction Documents Phase:	Fifty Nine	percent (59%)
Bidding or Negotiation Phase:	Two	percent (2%)
Construction Phase:	Twenty One	percent (21%)
Total Basic Compensation		one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.2. For Additional Services of the Architects, as described in Article 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2. and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

Principals time at fixed rate:	Edwin A. Lenvik	\$140.00/hour
	David P. Jones	\$125.00/hour
	Richard S. Six	\$125.00/hour

Employee time (other than principals) is billed at a multiple of two point five (2.5) times the employee's Direct Personnel Expense. Computer aided drafting and design (CADD) time is billed at a multiple of three point zero (3.0) the employee's Direct Personnel Expense.

At the request of the client, employees who are asked to work overtime will be compensated at 1.5 times their base wages. The adjusted wage rate will be billed to the client. Overtime pay will be in conformance with the State of California "8-hour Day Restoration & Workplace Flexibility Act of 1999" (AB60).

The firm has a minimum billing increment of one-quarter of an hour for services. Time is computed door to door, unless otherwise indicated, and the time for which we will bill includes only time for which we are actually engaged in the Client's project. Principals and other personnel serving in the capacity of an expert witness will have their time billed at 1.5 times their regular billing rate.

11.3.3. For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those

provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point one five (1.15) times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point one five (1.15) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 *If the Basic Services* covered by this Agreement have not been completed within eighteen (18) months of February 1, 2002, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

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11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

Interest of 10% per year (but not exceeding the maximum rate allowable by law) will be payable on any amount not paid within 60 days. Payment thereafter to be applied first to accrued interest and then to the principal unpaid amount.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The data and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 Architect's service and fee is based on the "in progress" design drawings produced by Andy Neumann Architect which include the Structural, Mechanical, Plumbing and Electrical drawings by Ove Arup and Partners, the Civil Engineering by Flowers and Associates and the Landscape drawings by Cunningham Design. Those drawings are titled "Phase 2—Design Development, R & D Office Part for OAD Inc.", APN: 005-110-001 being 45 sheets of drawings, generally dated 9/4/98.

12.2 The construction drawings will be for "shell and core" only, The "core and shell" include restrooms, elevators and stairs but will not include any of the other interior improvements indicated in the basement. The balance of the Interior will be left unfinished with no interior partitions, finishes on the interior of the exterior walls or ceiling systems, with the exception of the entry lobby which will be detailed with all interior finishes.

12.3 Pool or fountain design will be by others.

12.4 All exterior flatwork and other site landscape furniture, etc. will be designed and specified by the Landscape Architect and will be part of his drawings. The Structural Engineer or Civil Engineer will take responsibility for the retaining walls.

12.5 We will assist Andy Neumann Architect in his representation of the project before the Summerland design review board and the County Board of Architectural Review (BAR). Any public presentations beyond the above will be considered additional services.

12.6 Our services do not include any renderings or other graphic presentations.

12.7 The Architect's construction phase administration is based on a construction period not exceeding twelve months. See Article 2.6.1. That construction period would start when the first submittals were made to our office or the first field visits were conducted. If the construction period for the "shell and core" portion of the building exceeds twelve months our fee would be adjusted accordingly.

12.8 All building finish materials and colors will be selected by Andy Neumann Architect.

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12.9 Our services under this Agreement are based on Andy Neumann Architect's drawings dated 9/4/98 as identified in Article 12.1. We have not tried to "second guess" or anticipate any changes that might be required to the design and/or construction drawing effort as a result of value engineering being done by the General Contractor, future analysis of the building's design for conformance with current building codes, future refinement of the design by Andy Neumann Architect, or changes which may come out of subsequent governmental

design review meetings. If there are changes to the project which effect our work we would need to reexamine the fee and the time schedule for producing the construction documents. Changes or adjustments to the building design will be considered additional services.

12.10 Architect shall maintain professional liability insurance (\$1,000,000) for a period of three years after the date of substantial completion.

12.11 The Architect agrees to keep confidential and not to disclose to any person or entity, other than the Architect's employees and subcontractors, without the prior consent of the Owner, all data and information not previously known to and generated by the Architect, or furnished to the Architect and marked confidential by the Owner in the course of the Architect's performance hereunder; provided, however, that this provision shall not apply to data which are in the public domain, or were previously known to the Architect, or which were acquired by the Architect independently from third parties not under any obligation to the Owner to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of the Architect, nor shall they be interpreted to in any way restrict the Architect from complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction. The Owner agrees that the Architect may use and publish the Owner's name and a general description of the Architect's services with respect to the project in describing the Architect's experience and qualifications to other clients and prospective clients.

/s/ KATHLEEN FISHER

OWNER *(Signature)*
Kathleen Fisher
Exec. V.P./Chief Financial Officer-QAD, Inc.
(Printed name and title)

/s/ EDWIN A. LENVIK

ARCHITECT *(Signature)*
Edwin A. Lenvik, AIA
President
(Printed name and title)

QuickLinks

[Abbreviated Standard Form of Agreement Between Owner and Architect](#)



MASTER SERVICES AGREEMENT

BETWEEN

EQUANT INC.

AND

QAD INC.

AGREEMENT NUMBER: MSA/US/QAD/06/02/05

DATED: June 6, 2002

Final

EQUANT MASTER SERVICES AGREEMENT

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DATE ISSUED: June 6, 2002

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This Agreement is made as of April 30, 2002 ("**Effective Date**") between:

- (1) **Equant Inc.**, a company incorporated in Delaware, with its principal place of business located at 400 Galleria Parkway, Atlanta, Georgia 30339 ("**Equant**"); and
- (2) **QAD Inc.**, a company incorporated in Delaware, with its principal place of business located at 6450 Via Real, Carpinteria, California 93013 ("**Customer**").

BACKGROUND

- (A) Customer desires to obtain data, voice, and professional services from Equant in order to facilitate communications between various locations, as described in the Service Annexes; and
- (B) Equant has agreed to provide, and Customer has agreed to use the Services in accordance with the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS

In addition to capitalized terms defined elsewhere in this Agreement, the following capitalized words and phrases have the meanings given below.

"Affiliate"	means in relation to an entity, any other entity controlled by, under common control with or controlling such entity, where "control" means an entity's (a) ownership, directly or indirectly, of equity securities entitling it to exercise in the aggregate at least 50% of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management and policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise.
"Agreement"	means this fully executed Master Services Agreement, including all Service Annexes, Order Forms, schedules, attachments, exhibits and all amendments to this Master Services Agreement as may be made in writing and signed by the Parties.
"Business Day"	means the customary working hours for each day in each country where the Services are provided (except locally observed holidays in such countries).
"Changes"	means changes to this Agreement effected pursuant to the Change Control Process.
"Change Control Process"	means the process set out in Clause 3.6.
"Charges"	means the fees and rates that Equant will charge Customer for all Services provided under this Agreement.

"Confidential Information"	means the contents of this Agreement and all information disclosed (whether in writing, or orally or whether directly or indirectly) by a Party to the other Party whether before or after the Effective Date of this Agreement and marked or indicated "CONFIDENTIAL", including information relating to the disclosing Party's products and services, operations, customers and prospects, know-how, design rights, trade secrets, market opportunities or business affairs.
"CPE"	or " Customer Premises Equipment " means the hardware (including cables, connectors and software) at Locations, as may be supplied by Equant as part of the Network Services.
"Date of Acceptance"	means the date the Acceptance Tests are successfully completed.
"Effective Date"	means, the date indicated above, or if no date is stated, the latest date written on the signature blocks of this Agreement.

"Force Majeure Event"	means a cause beyond the reasonable control of a Party affecting the performance of any of its obligations under this Agreement, as provided in section 13.14.
"Initial Term"	or "Term" means a period of thirty-six (36) months commencing on the Effective Date.
"Intellectual Property Rights"	means any patents, design rights, copyright, trademarks, trade names, trade secrets, know-how, in each case, whether registered or unregistered and any other intellectual property right whatsoever and wherever enforceable.
"Location"	means each User site to be provided with Services, identified in Order Forms.
"Losses"	means all claims, liabilities, demands, proceedings, losses, costs (including reasonable legal and other professional costs) and reasonable expenses of whatever nature.
"Network Services"	means the Equant data network services as described in the relevant Service Descriptions.
"Network"	means Equant's network used by Equant for the provision of the Network Services, excluding Tail Circuits, public networks and CPE.
"Order Form"	means any of Equant's standard order forms for the Services, prevailing from time to time.
"Order"	means any request for a Service issued by Customer or a User, using an Order Form. All Orders are subject to acceptance by Equant.
"Parties"	means Equant and Customer, or individually as a "Party" .
"Service Annexes"	means the annexes to this Agreement attached hereto and detailing Service specific additional terms and conditions, Service descriptions, the SLA(s), and the schedule of Charges.

"Service Level"	or "Service Level Agreement" or "SLA" means the required level of service that Equant shall provide to Customer.
"Services"	means the services to be provided by Equant to Customer under this Agreement, described in the applicable Service Annexes.
"Software"	means computer programs in object code, as applicable, provided or to be provided by Equant pursuant to this Agreement, and excluding any proprietary Software provided by Customer.
"Tail Circuit"	means a telecommunications circuit or other capacity and attached modems leased from a TO connecting Locations to the Network.
"Target Date"	means the expected date for delivery and acceptance of Network Services, as set out in Order Forms.
"TO"	or "Telecommunications Operator" means an entity authorized to own, lease and operate telecommunications circuits.
"Users"	means users of the Services under this Agreement, excluding Customer, who have been authorized by Equant in writing, and will include the entity or entities that are designated in an Order Form as the recipient of the Services.

The terms defined above include the plural as well as the singular. Any reference to a "Clause" means a clause of the document in which it appears unless otherwise expressly stated. The words "include" and "including" will not be construed as terms of limitation. Use of the word "or" means and/or. The words "day", "month", and "year" mean, respectively, calendar day, calendar month and calendar year, unless otherwise expressly stated. Any amounts expressed in dollars or preceded by "\$" will refer to United States dollars. The headings used in any document are included for convenience only and may not be used in construing or interpreting that document.

2. TERM

This Agreement becomes effective from the Effective Date and, except as provided under Clause 3.2, will continue in full force and effect for thirty-six (36) months. Thereafter, this Agreement shall continue on a monthly basis until terminated by either Party upon at least sixty (60) days notice before the end of the Initial Term or any renewal thereof.

3. ORDERING OF SERVICES

3.1. Equant's provision of any Services to Customer and Users is contingent upon the execution and acceptance of an Order Form for

each Service.

- 3.2. Upon the Effective Date of this Agreement, Customer will provide Equant with a list of Customer and User personnel who are authorized to issue Orders to Equant. Equant may elect not to accept any Orders that are issued by non-authorized personnel. Customer may add or delete names to/from the list, provided Equant has been notified in writing prior to the placement of an Order.
- 3.3. All revisions to a previously issued and accepted Order Form must be provided in writing and signed by duly authorized personnel. Revisions issued verbally or electronically to Equant must be confirmed in writing within three (3) Business Days. Customer will be charged for all costs incurred by Equant in preparation for the initially requested Services and those incurred in revising the Services.

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- 3.4. No cancellations of Orders will be permitted unless otherwise stated in this Agreement or in writing and agreed in advance by the Parties.

3.5. **New Services**

- (a) Customer may request that Equant provide certain services (collectively, "**New Services**") that are not described in any Service Annex, provided, however, that such a request will not require Customer to procure any such New Services from Equant.
- (b) Additionally, Customer may request pricing on a per project basis whereby Equant will provide pricing (a "**Price Quote**") in accordance with the following:
 - (i) upon receipt of such request, Equant will investigate and advise Customer of the feasibility and availability of the proposed New Service, and to the extent possible, if Equant can legally provide the New Service. If so, Equant will promptly provide Customer with a Price Quote for such New Services;
 - (ii) Customer will have sixty (60) days or as mutually agreed to time period to accept or reject the Price Quote. If Customer accepts the Price Quote, the Parties will execute an amendment to this Agreement, adding or revising the relevant Service Annex;
 - (iii) upon execution of all necessary documentation by both Parties, such New Services will be by amendment and will be deemed "Services" under this Agreement, and Equant will commence provision thereof.

3.6. **Change Control Process**

Customer may request Changes to this Agreement using the relevant Order Form in respect of any upgrades, downgrades, re-configuration or re-location of any Services ordered. All Changes will be subject to such terms and conditions (including financial considerations) to be agreed by the Parties.

4. **INVOICES, PAYMENT AND TAXES**

4.1. **Commencement of Invoicing**

- 4.1.1 Charges for all Services are set out in the schedule of Charges, or in Order Forms. Charges will be invoiced and paid in Dollars.
- 4.1.2 Equant will commence invoicing of all Charges as of the date specified in the relevant Service Annex.
- 4.1.3 Equant will invoice all fixed recurring Charges monthly in advance, all other recurring Charges monthly in arrears, and all Charges for one time services on completion of the Service, unless otherwise specified in any Service Annex.
- 4.1.4 Equant shall invoice Customer for its Charges, excluding claims for Losses, within one hundred eighty (180) days after the month in which the applicable Services and other work are rendered or the expense incurred.
- 4.1.5 Equant shall invoice Customer for all Tail Circuit Charges and third party charges, excluding claims for Losses, within one (1) year after the month in which the applicable Services and other work are rendered or the expense incurred.

4.2. **Payment**

All invoices are due and payable within thirty (30) days of the date of the invoice. Customer may dispute an invoice within one hundred eighty (180) days of the invoice date. Failing any notification of a dispute from Customer within the one hundred eighty (180) day period,

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Customer will be deemed to have accepted the amounts stated on the invoice. In the event of a good faith, timely notified dispute on a part of the invoice, Customer may withhold payment only of the disputed amount.

4.3. **Taxes**

The amounts listed in the schedule of Charges do not include taxes or government imposed fees or surcharges, including VAT, sales, excise, gross receipts, withholding taxes and universal service fund fees, which will be invoiced to Customer in accordance with local law. Customer agrees to pay or reimburse Equant for all such taxes, fees, and surcharges, excluding tax on Equant's, associated companies or Sub-Contractors income. In respect of withholding tax, Customer will pay such additional amounts as may be necessary, such that Equant receives the amount it would have received had no withholding been imposed.

4.4. **Late Payment**

Failure by Customer to pay any undisputed charges in accordance with this Agreement will entitle Equant to suspend the Service to which the non-payment relates, having given thirty (30) days notice of its intention to do so, and Customer having failed to remedy its payment default during that time unless such payment is disputed in good faith pursuant to Clause 4.5 below.

The exercise of this remedy is without prejudice to Equant's other rights and remedies under this Agreement.

4.5. **Billing Disputes**

In the event that Customer disputes in good faith the accuracy or validity of an invoice provided by Equant, Customer shall notify Equant within thirty (30) business days of the receipt of the invoice stating the reason why Customer disputes the invoice and the amount in dispute. Customer shall pay the undisputed portion of the Charges to Equant. Customer and Equant shall use their commercially reasonable efforts to promptly resolve any billing dispute in accordance with the dispute procedure set forth in Clause 12.1.

4.6. **Credit Requirements**

4.6.1. From time to time, Customer may be requested to provide financial information as Equant may reasonably request, to determine Customer's continued creditworthiness.

4.6.2. If Equant reasonably determines that Customer's creditworthiness is insufficient to cover the full payment of all Charges under this Agreement, Equant may require Customer to provide a financial guarantee in a form reasonably acceptable to both Parties in order to continue the provision of the Services as a condition for the continued provision of the Services.

4.7. **Additional Pro Forma Invoices**

Equant shall include pro forma invoices along with each billing invoice to allow Customer to identify its pass-through costs related to the use of the Services by Customer's Affiliates and use such documentation to substantiate potential local tax deductions. The content of such schedules and pro forma invoices will be agreed by the Parties and shall be provided to Customer for a Charge of \$250 per month. In no event shall Equant be liable to Customer or Customer's Affiliates for any disallowance or rejection of local tax deductions by the applicable authorities due to the provision of such pro forma invoices by Equant or the content thereof.

5. **INTELLECTUAL PROPERTY RIGHTS**

5.1. **Ownership of Intellectual Property**

As between the Parties, all Intellectual Property Rights in the Services are either owned by or licensed to Equant. Nothing contained in this Agreement will be deemed to convey any title or ownership interest in any Intellectual Property Rights to Customer or Users, nor are any rights or licenses granted by this Agreement with respect to any Intellectual Property Right, except as otherwise expressly provided in this Agreement.

5.2. **Indemnification for Infringement of Intellectual Property Rights**

Equant, at its expense, will indemnify, defend, and hold harmless Customer from any action brought against Customer or any User based on a claim that any Service or part thereof infringes any Intellectual Property Right in any country where the Service is provided, if Customer promptly notifies Equant in writing when such action is brought against Customer and Equant has sole control of such defense. Equant at its sole option may settle or compromise the claim. Notwithstanding the foregoing, Customer may elect to be represented by its own counsel at its cost in any such settlement negotiation. In addition, Equant will pay all fees, costs or damages finally awarded in the action or constituting a settlement thereof, provided Customer gives Equant reasonable assistance in the defense or settlement. In the event that an injunction, whether temporary or permanent, is obtained against Customer prohibiting the use of a Service or any part thereof, by reason of such infringement, Equant will:

- (a) use reasonable efforts, at its own expense, to procure the right for Customer to continue using the Service, or replace or modify the Service so that it is no longer infringing an Intellectual Property Right; or
- (b) only if Equant cannot achieve the solution referred to in Clause 5.2 (a) above, direct Customer to cease using the affected Service or to return the infringing equipment to Equant at Equant's expense, in which case the relevant Order will be automatically terminated.

5.3. Equant will have no obligation to defend Customer or any User or to pay costs, damages or fees for any claim based on:

- (a) use of the Service or of any part thereof other than the current unaltered Service provided by Equant, if such infringement would have been avoided by the use of the current unaltered Service provided by Equant; or
- (b) the combination, operation or use of a Service, or of any part thereof, with non-Equant services, equipment or software, if such infringement would have been avoided by not combining, operating or using such Service or part thereof with other such non-Equant service, equipment or software.

6. SOFTWARE

If required to enable Customer or Users to use a Service, Equant, will grant to Customer and Users for the Term of this Agreement, non-exclusive and non-transferable licenses to use Software strictly for such purpose. Customer agrees not to produce, copy (except for the purpose of retaining a back-up copy), alter, modify, or add to the Software or any part thereof, nor to attempt or to allow a third party to attempt to reverse engineer, translate or convert the Software from machine readable to human readable form, except as permitted by applicable law.

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7. CONFIDENTIALTY AND NON-DISCLOSURE

- 7.1. During the Term of this Agreement and for three (3) years after its expiry, each Party will (a) use Confidential Information of the other Party only for the purpose of this Agreement (which may include disclosure to all necessary sub-contractors, provided such subcontractors agree to comply with the provisions of the Agreement); (b) only disclose the Confidential Information to a third party with the other Party's prior written consent, except to its professional advisors and auditors and as regards Equant, to its Affiliates which agree to comply with this Agreement; and (c) use reasonable endeavors to prevent the unauthorized use or disclosure of Confidential Information using at least the same degree of care exercised to protect its own Confidential Information.
- 7.2. Clause 7.1 will not apply to the disclosure of Confidential Information (a) which is in the public domain at the time of disclosure otherwise than by the receiving Party's breach of Clause 7.1; (b) which is rightfully received from a third party or independently developed by the receiving Party; or (c) in accordance with the order of a court or governmental authority, in which case the receiving Party will give as much advance notice thereof to the disclosing Party as is reasonably practicable and will use its reasonable efforts to limit the extent of any such disclosure.
- 7.3. Neither Party will make any public announcement or issue any press release concerning this Agreement, the fact that Customer is a customer of Equant for the Services, or the transactions contemplated hereby, without the other Party's prior written consent, such consent not to be unreasonably withheld or delayed.

8. EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 8.1. Neither Party will be liable for any indirect, incidental or consequential loss or damages, howsoever arising, including loss of use or data or lost time, revenue, profits, goodwill of clients or any business interruption of any kind even if advised of the possibility of such damages.
- 8.2. Except for completing any payment obligations, which Customer shall satisfy as soon as practicable following a Force Majeure Event that initially prevents Customer from meeting its payment obligations in a timely manner but in any case within thirty (30) days of the Force Majeure Event, neither Party will be liable for any delay or for the consequences of any delay in fulfilling any of its obligations under this Agreement if such delay is due to a Force Majeure Event.
- 8.3. Equant will have no liability in contract, tort or otherwise for any claim of unauthorized access of Customer's or any Users' transmission facilities or equipment, or for unauthorized access to, or alteration, theft or destruction of Customer's or any Users' data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, except to the extent caused by Equant's willful misconduct or gross negligence.
- 8.4. EACH PARTY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, WILL BE LIMITED, FOR EACH EVENT OR SERIES OF CONNECTED EVENTS, AS FOLLOWS:
 - (A) FOR FAILURE TO COMPLY WITH THE SERVICE LEVELS SET OUT IN THE SERVICE ANNEXES, TO THE AMOUNT OF CREDITS SET OUT IN THE RELEVANT SLA;
 - (B) FOR DAMAGE OR DESTRUCTION OF TANGIBLE PROPERTY, *;

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

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- (C) FOR ALL OTHER EVENTS, * OR THE CHARGES INCURRED IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CAUSE OF ACTION UNDER THE ORDER TO WHICH THE CLAIM RELATES, WHICHEVER IS THE GREATER.

THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED IN CLAUSE 8.4 DO NOT APPLY TO CLAUSES 5 AND 7 OR TO CLAIMS FOR DEATH OR PERSONAL INJURY.

8.5. Limitation of Warranties

- 8.5.1 EXCEPT FOR ANY EXPRESS WARRANTY SET OUT IN THE SLAS CONTAINED IN THE SERVICE ANNEXES OR ELSEWHERE IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S AND USERS' USE OF THE SERVICES IS AT THEIR OWN RISK. EQUANT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EQUANT DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE.
- 8.5.2 The obligation of Equant and the rights and remedies of Customer set out in this Agreement are exclusive and in substitution for all other remedies, obligations and liabilities of Equant. The remedies of the Parties with respect to any matter under this Agreement will be limited to the remedies set out herein; provided, that neither Party will receive duplicative recoveries.

9. TERMINATION

9.1. Immediate Termination

Either Party may terminate this Agreement with immediate effect, by giving notice to the other Party, if:

- 9.1.1. the other Party commits any material breach of this Agreement, and does not remedy the breach (if it is capable of remedy) within thirty (30) days of notice of the breach being given by the non-defaulting Party. Failure to meet an SLA will not be deemed a material breach for the purpose of this Clause 9.1.1, and any right of termination will be governed by the terms of the SLA set out in the relevant Service Annex;
- 9.1.2. a court order is made, or an effective resolution is passed for the dissolution or winding up of the other Party except for the purposes of an amalgamation, merger or restructuring;
- 9.1.3. a lien holder takes possession or a receiver is appointed over the whole or a material part of the undertakings or assets of the other Party;
- 9.1.4. the other Party becomes insolvent or makes any special arrangements or any special assignment for the benefit of its creditors, or is the subject of a voluntary or involuntary filing under the insolvency or bankruptcy laws of any jurisdiction;
- 9.1.5. all Orders have been terminated pursuant to Clause 9.2.

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

9.2. Termination on Notice

Either Party may terminate any Order with immediate effect by giving notice to the other Party:

- 9.2.1. if the other Party fails to make any payment relating to that Order when due and does not remedy this within thirty (30) days following notice thereof, unless such payment is in dispute in accordance with Clause 4.5;
- 9.2.2. as permitted in the relevant SLA;
- 9.2.3. if a Force Majeure Event affecting the provision of Services under that Order continues for more than thirty (30) consecutive days.

9.3. Effect of Termination

- 9.3.1. On termination of this Agreement, all Orders will immediately be terminated. The expiration or termination, for any reason, of this Agreement or of any Order, will not affect (a) the rights of either Party against the other which have accrued on or prior to the termination; nor (b) any provision expressed to survive the termination.
- 9.3.2. On termination of this Agreement for whatever reason, each Party will immediately return to the other Party all property of whatever kind and nature provided under this Agreement and belonging to the other Party, including Confidential Information.

- 9.3.3. Subject to Clause 6.2 of Annex 1-A and satisfaction of the Service Commitments in Annex 1-F, Customer may terminate service at any Location at any time provided that (i) the Service has been connected at the applicable Location for a minimum of twelve (12) months, and (ii) Customer continues to meet the agreed to Services Commitment set forth in Annex 1-F for the remainder of the Term. Notwithstanding the foregoing, the twelve (12) month minimum connection requirement stated in subsection (i) above shall not apply to the following Locations as of the Effective Date:

Carpinteria, CA USA
Mt. Laurel, NJ
Alfortville, France
Annecy, France
Bangkok, Thailand
Mexico City, Mexico
Adelaide, Australia
Grand Rapids, Michigan USA
Durban, South Africa
Chicago, Illinois USA
Istanbul, Turkey
Johannesburg, South Africa
Limerick, Ireland
Milan, Italy
Mumbai, India
Sydney, Australia
Osaka, Japan
Powell, TN USA
Rancho Pales Verdes, CA USA
San Mateo, CA USA
Sao Paulo, Brazil
Singapore

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Tokyo, Japan
Wanchai, Hong Kong
Dudley, UK
Willich, Germany
Wroclaw, Poland

The following Locations will satisfy the twelve (12) month minimum connection requirement stated in subsection (i) above on the dates set forth below:

Turin, Italy	December 1, 2002
Melbourne, Australia	June 1, 2003
Brisbane, Australia	November 1, 2002
Milton, Australia	November 1, 2002
Schiphol, Netherlands	June 1, 2003

10. ASSIGNMENT

- 10.1. Either Party may at any time assign all or part of its rights or obligations under this Agreement to any of its Affiliates, provided that (a) the assignee is not a direct competitor of the other Party; or (b) the assignment would not cause the other Party to incur materially increased costs in connection with the provision of the Services or this Agreement.
- 10.2. Subject to Clause 10.1 and 13.4, neither Party may assign, or otherwise dispose of its rights or obligations under this Agreement, or any part of this Agreement, without the written consent of the other Party, such consent not to be unreasonably withheld or delayed.

11. GOVERNING LAW

This Agreement and all matters regarding the interpretation or enforcement hereof, will be governed exclusively by the laws of the State of New York, without regard to its conflict of laws provisions.

12. DISPUTE RESOLUTION

12.1 Informal Dispute Resolution

Equant and Customer will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten (10) days after delivery of the notice, the receiving party will submit to the other a written response. The notice and the response will include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany that executive. Within twenty (20) days after delivery of the disputing party's notice, the executives of both parties will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to attempt to resolve the dispute. If the executives are unable to reach resolution within forty-five (45) days after delivery of the disputing party's notice, then the parties may proceed to mediation or arbitration as set forth below. All reasonable requests for information made by one party to the other will be honored.

- 1.1. **Arbitration.** All disputes, controversies or differences which may arise between the Parties, out of, or in relation to or in connection with this Agreement, or for the breach of it, will be initially by internal dispute resolution and then, if necessary, exclusively by arbitration before a single arbitrator in New York City, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Each Party irrevocably consents to personal jurisdiction and to ex parte action should any Party refuse to participate in such proceedings. The arbitrator's award will be final and binding on all Parties and judgment on the award may be entered and the award enforced in any court having jurisdiction thereof.

13. GENERAL

- 13.1. **Notices.** Any and all notices required or permitted to be given under this Agreement will be in writing and will be sufficiently given when delivered (i) by hand, (ii) by registered mail, postage prepaid, return receipt requested, (iii) by facsimile transmission, sent to the addresses of the Parties appearing on page 3 of this Agreement or such other address as may be notified by a Party to the other. Except in the case of delivery by hand, and save for evidence to the contrary, notices will be deemed to have been given on the day on which such communication ought to have been delivered in due course of postal or facsimile transmission.
- 13.2. **Status of the Parties.** This Agreement is not intended to create, nor will it be construed to be, a joint venture, association, partnership, franchise, or other form of business relationship. Neither Party will have, nor hold itself out as having, any right, power or authority to assume, create, or incur any expenses, liability, or obligation on behalf of the other Party, except as expressly provided in this Agreement.
- 13.3. **Third Party Beneficiaries.** Nothing in this Agreement will be construed as conferring any rights or benefits on any person or legal entity (including Users other than Customer) who or which is not a party to this Agreement.
- 13.4. **Sub-Contractors.** Equant will be entitled to sub-contract any of its obligations to a third party (each, a "**Sub-Contractor**"), except that it will not sub-contract any of its obligations to a third party which may be reasonably considered as a competitor of Customer without Customer prior written consent. Equant will be responsible for the acts and omission of any Sub-Contractor.
- 13.5. **Invalidity.** Should any provision of this Agreement be declared invalid for any reason, such decision will not affect the validity of any remaining provisions which will remain in force and effect as if this Agreement had been executed with the invalid provision eliminated. In any such event, the Parties will work together and negotiate in good faith to replace the invalid provision with a provision of equivalent economic effect.
- 13.6. **No Waivers.** The failure of either Party to require the performance of any of the terms of this Agreement or the waiver by either Party of any default under this Agreement will not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.
- 13.7. **Modifications of the Agreement.** This Agreement may be modified, supplemented, or amended upon signed written agreement of the Parties.
- 13.8. **Order of Precedence** In the event of any conflict or inconsistency between the provisions of (1) the body of this Agreement; (2) the Service Annexes; and (3) Order Forms, the following order of precedence will apply:
- 1.2. the body of this Agreement;

- 1.3. the Service Annexes;

1.4. the Order Forms.

This order of precedence will apply unless otherwise expressly set out in any Service Annex.

13.9. **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations (innocent or negligent), and proposals, written or oral, relating to its subject matter including, without limitation, the Managed Data Network Services Agreement Number MDNS/US/QAD/07/99/02 executed between the Parties. Neither Party will be bound by or liable to the other Party for any representation, promise, or inducement made by any agent or person in the other Party's employ which is not expressly stated in this Agreement.

13.10. **Compliance with Laws.** The Parties will comply in all material respects with all telecommunications, data protection and other laws relating to the subject matter of this Agreement.

13.11. **Non-Solicitation.** Each Party acknowledges the importance of the other Party's employees to its successful operation, and agrees not to solicit, for the purposes of making an offer of employment any person employed by the other Party (a) at any time during the term of this Agreement (including any extensions hereof); and (b) for a period of 12 months following the termination of this Agreement, without the prior written consent of the other Party. The Parties expressly acknowledge that the remedy at law for any breach by it of this covenant will be inadequate and therefore, in the event of any threatened or actual breach of such covenant, the breaching Party will be entitled to injunctive or other equitable relief in addition to any other remedies that it may have at law or in equity.

13.12. **Independent Counsel.** This Agreement has been negotiated at arms length and jointly prepared by the Parties and their respective counsel of choice.

13.13. **Counterparts.** This Agreement may be signed in any number of counterparts each of which, when signed, will be an original, but all the counterparts together will constitute one and the same instrument.

13.14. **Force Majeure.** Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fires, floods, strikes, lockouts, epidemics, accidents, shortages, act of any governmental authority, or other causes beyond the reasonable control and without the fault or negligence of the delayed or non performing party or its subcontractors. If any such conditions occur, the party delayed or unable to perform shall give immediate notice to the other party stating the nature of the condition and any action being taken to avoid or minimize its effect.

13.15. **Survival.** The provisions of this Agreement that, by their very nature, are intended to survive this Agreement, including without limitation, Clauses 7, 8, and 9, shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set out below.

FOR AND ON BEHALF OF:

EQUANT INC.

BY: /s/ BRUCE W. SMITH

NAME: Bruce W. Smith

TITLE: Head of North America

DATE: 7/22/02

FOR AND ON BEHALF OF:

QAD INC.

BY: /s/ VINCE NIEDZIELSKI

NAME: Vince Niedzielski

TITLE: Executive VP, R&D

DATE: 6/7/02

SERVICE ANNEX 1—NETWORK SERVICES

ANNEX 1-A—ADDITIONAL TERMS AND CONDITIONS FOR NETWORK SERVICES

The terms set forth below may conflict with terms and conditions set forth in another Service Annex. Such conflicting terms are not inadvertent; rather, they are due to the nature of these Specific Conditions. To the extent that there is a conflict, the terms provided in these Specific Conditions will prevail regarding delivery of the Services described in this Service Annex

1. Definitions

All capitalized terms used will have the meanings set out elsewhere in this Agreement.

2. Provision of Network Service And Support Services—Equant's Obligations

2.1.

Equant will provide the Services ordered by Customer as of the Date of Acceptance.

- 2.2. Equant will cooperate with and provide all reasonable assistance to Customer in its performance of this Agreement including the timely provision of all information necessary for Customer to utilize the Services and effect any Changes.
- 2.3. The Services will conform to the Service Levels set out in the relevant SLAs attached to this Agreement. If any Service fails to so conform, Customer will be entitled to the remedies set out in the relevant SLA attached to this Agreement.
- 2.4. Equant will maintain during this Agreement, security procedures (as the same may be revised from time to time so as to maintain security), to protect Customer's computer stored data transmitted over the Network from unauthorized access and disclosure other than as permitted by this Agreement or to anybody having statutory authority to require Equant to make disclosures. The security procedures will at all times be consistent with the Code of Practice for Information Security Management.
- 2.5. Equant will not inspect Customer data transmitted over the network beyond OSI Layer 4.
- 2.6. Equant will not provide service via a NNI or third party Frame Relay provider without prior approval.
- 2.7. *Technology upgrades*

Equant warrants that it will keep up to date in technology changes in the telecommunications industry and will offer all new technologies to Customer when commercially available. In the event that Customer is able to demonstrate that it can obtain an enhanced or upgraded service as an alternative to the Service at all the Locations listed in the table following this Clause 2.7 from at least one (1) other single-source service provider at performance levels and charges equivalent to or better than the Service Levels and Charges, then Equant shall have four (4) months in which to offer such enhanced or upgraded service to Customer at competitive charges and performance levels, failing which Customer's sole remedy shall be the right to terminate this Agreement upon thirty (30) days notice subject to payment of the Charges set forth in Clauses 6.2.2 and 6.2.3 of this Annex 1-A.

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Table to Annex 1-A

Technology Upgrade Locations

Carpinteria, CA USA
Mt. Laurel, NJ
Alfortville, France
Annecy, France
Mexico City, Mexico
Adelaide, Australia
Grand Rapids, Michigan USA
Chicago, Illinois USA
Limerick, Ireland
Melbourne, Australia
Milan, Italy
Milton, Australia
Sydney, Australia
Nieuwegein (Schiphol) Netherlands
Osaka, Japan
Powell, TN USA
Rancho Pales Verdes, CA USA
San Mateo, CA USA
Sao Paulo, Brazil
Singapore
Tokyo, Japan
Turin, Italy
Wanchai, Hong Kong
Dudley, UK
Willich, Germany

3. Use of Network Services—Customer's Obligations

- 3.1. Customer will accept the Services on each mutually agreed upon Date of Acceptance and thereafter pay the Charges for all Services in accordance with this Agreement.
- 3.2. Customer will cooperate with and provide all reasonable assistance to Equant in its performance of this Agreement including the timely provision of all information necessary for Equant to install the Services and effect any Changes.
- 3.3. Customer will not knowingly use the Services to transmit, distribute, disseminate, publish, or store any material that:
 - (a) is in violation of any applicable local, national, or international law or regulation;
 - (b) is defamatory, abusive, obscene, indecent, or harassing; or that threatens or encourages bodily harm, destruction of property, or infringement of the lawful rights of any party;

- (c) violates the privacy of any party as protected by applicable local, national, or international law or regulation; or
- (d) contains software viruses, trojan horses, or any computer code, files, or programs designed to disrupt, destroy, invade, gain unauthorized access to, corrupt, observe, or modify without authorization, data, software, computing or network devices, or telecommunications equipment.

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- 3.4 Customer will not knowingly use the Services to access any computer, network, or data without authorization or in a manner which exceeds authorization including, any attempt to:
 - (a) retrieve, alter, or destroy data;
 - (b) probe, scan or test the vulnerability of a system or network; or
 - (c) breach or defeat system or network security, authentication, authorization, confidentiality, intrusion detection, monitoring, or other security measures.
 - 3.5 Customer will indemnify and hold harmless Equant and its Affiliates from and against any and all Losses caused by or arising from any breach by Customer or Users of Clauses 4.3 and 3.4.
 - 3.6 Customer will not interconnect the Network, or cause or allow the Network to be interconnected via an NNI (Network to Network Interface—on layer 1 and 2 of the OSI Model), with any other network unless Equant has given Customer its prior approval. Any breach of this provision will be a material breach of this Agreement
 - 3.7 Customer will ensure that all Users will comply at all times with the obligations of Customer under this Agreement.
 - 3.8 Except as otherwise authorized under this Agreement, Customer will not resell or otherwise make available the Services to any third party. Any breach of this provision will be a material breach of this Agreement.

4. CPE

- 4.1 The Services may include CPE. Equant warrants that it has the right to provide the CPE to Customer and that Customer and its Affiliates will have the right to use the CPE for the duration of this Agreement.
- 4.2 Equant will connect the CPE at the Locations on dates to be agreed by the Parties. If a connection requires the removal or disconnection of any existing equipment of Customer, Customer will permit, or obtain all necessary consents for, the removal or disconnection and will give Equant all reasonable assistance to enable the work to be carried out.
- 4.3 The CPE will at all times remain the sole and exclusive property of Equant or its Sub-Contractors and Customer will obtain no property rights or interest in the CPE but will have the right to quiet possession and the right to use the CPE in accordance with this Agreement.
- 4.4 Customer will have the following obligations with respect to the CPE:
 - 4.4.1 not to sell, assign, sub-let, pledge or part with possession or control of, or otherwise deal with the CPE or any interest in it;
 - 4.4.2 not to change, remove or obscure any labels, plates, insignia, lettering or other markings which are on the CPE at the time of its connection or which may afterwards be placed on the CPE by Equant;
 - 4.4.3 to keep the CPE free from distress, execution or any other legal process provided Equant shall have taken such action itself as shall be reasonably necessary or appropriate to protect against claims of liens;
 - 4.4.4 not to move the CPE from the Location to which it was delivered and connected without Equant's prior consent, which consent shall not be unreasonably be withheld;
 - 4.4.5 not to use the CPE or permit the same to be used contrary to any law or any regulation for the time being in force;

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- 4.4.6 to ensure that proper environmental conditions as recommended in writing by Equant are maintained for the CPE and that the exterior surfaces are kept clean and in good condition;

- 4.4.7 not make any modifications to the CPE; without Equant's prior consent;
- 4.4.8 provide Equant with all reasonably required access to the Locations.
- 4.5 Upon termination of this Agreement, Customer will surrender possession of the CPE in good order, repair and condition, to Equant, reasonable wear and tear excepted, provided Equant covenants to remove such CPE in a manner that does not cause damage to Customer property or premises.
- 4.6 Subject to Clause 4.4 of this Service Annex, Equant will ensure that the CPE is in good working order for the duration of this Agreement. If a fault in a Service occurs which has been caused by a failure in the CPE, Equant will repair the fault as soon as possible following notification of the fault by Customer or detection of the fault by Equant, whichever first occurs. If a visit to a Location is required, Equant will comply with the relevant Service Level described in the SLA.
- 4.7 Any visits to a Location or repairs to CPE made necessary by: (a) damage to the CPE not caused by Equant; (b) interventions other than normal interventions carried out by non-Equant personnel; (c) modifications to the CPE which have not been approved by Equant or have been carried out by personnel not approved by Equant; (d) improper treatment of the CPE by Customer; (e) failure by Customer to meet the CPE manufacturer's specifications as advised by Equant to Customer on environmental conditions; or (f) Customer's negligence, will entitle Equant to make an additional charge for the Services at the relevant Location, such additional charge to be equal to the actual and reasonable cost to Equant of restoring the Services and repairing or replacing the CPE.

5 Connection of Services

- 5.1 Equant will use reasonable efforts to connect Services on the Target Dates, or if not so stated on dates agreed by the Parties and in any event as soon as possible after the date the Tail Circuits are made available by the TOs. Equant will use all reasonable efforts to ensure that Tail Circuits are ordered and administered by Equant so as to be made available in accordance with TOs' usual lead times. However, Equant will have no responsibility, nor liability for delays caused by Customer Users, TOs or any event of Force Majeure. In the event of any such delays, Equant will use all reasonable efforts to provide the Services at the earliest opportunity. Equant reserves the right to connect an interim service of an equivalent functionality and performance should such delays occur.
- 5.2 Customer will use all reasonable efforts to accept the Services on agreed connection dates. Equant reserves the right to commence the Charges for any delayed Service due to Customer's breach of this provision, and in addition no such delay will affect Equant's right to receive reimbursement from Customer for all TO and other third party vendor charges in respect of Tail Circuits and communications equipment incurred from the date of any contract between Equant and any TO or other third party vendor.
- 5.3 Customer also understands that should Equant, its agents or Sub-Contractors carry out a visit agreed to in advance by Customer to a Location in order to connect a Service, and then be unable to do so as a result of any act or omission by Customer or any User, Equant reserves the right to charge Customer for such visit at its then current manpower rates for such time and its reasonable travel and out of pocket expenses.

6 Cancellation of Services

- 6.1 Customer may not cancel or disconnect any Service during the Term of this Agreement unless:
 - 6.1.1 Customer is entitled to terminate this Agreement, or to cancel a Service pursuant to its rights under any SLA;
 - 6.1.2 Customer is unable to conduct its business at any Location due to Force Majeure. Customer may only invoke this provision after 30 continuous days of Force Majeure;
 - 6.1.3 Customer is unable to conduct its business at a Location due to insolvency, cessation of business or dissolution of an entity within the Customer's operation. In such instance Customer shall advise Equant in writing of its intent to cancel such Location, with the reasons for such cancellation.
 - 6.1.4 Customer substitutes any Location or PVC with a new Location or PVC having equivalent monthly recurring Charges that are substantially equivalent to the monthly recurring Charges of the Location or PVC being disconnected, provided Equant is able to connect the Service at the new Location or PVC. Equant shall be entitled to charge a connection and project management fee for the new Location or PVC, as agreed by the Parties.
- 6.2 Any cancellation or disconnection of a Service authorized by Equant will be conditional on Customer providing the following:
 - 6.2.1 at least sixty (60) days prior notice and signature on and return of an Equant Disconnect Form to Equant;
 - 6.2.2 for CPE based services, payments of (i) an early disconnection charge of \$1500; and (ii) the applicable router disconnection fee indicated in the table following this Clause 6.2; and

- 6.2.3 any contingent Tail Circuit charges including any cancellation penalties; Equant agrees to mitigate any such charges by terminating any Tail Circuit leases with the TO as soon as practicable following notification of the cancellation by Customer. In most cases, cancellation penalties imposed by TOs will not exceed 12 month's charges for the disconnected Tail Circuit.

Location	Router Disconnection Fee
Netherlands	\$ 1,275
USA	\$ 1,050
Hong Kong	\$ 1,500
Australia	\$ 1,500

- 6.3 Payment of the charges set out in Clauses 6.2.2 and 6.2.3 above are in addition to any early termination damages that may accrue elsewhere in this Agreement.

7 Reservation of Rights

- 7.1 Equant reserves the right to make operational changes to the Services, if the changes do not adversely affect the Services provided to Customer nor cause Customer to incur increased charges, and Equant will provide advance notice of such operational changes whenever practicable.
- 7.2 Equant will be entitled to refuse, suspend, or discontinue the provision of Services to Customer in any Location by providing to Customer prior written notice as is appropriate under the circumstances, if Equant, in its reasonable discretion, determines that the provision

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of any Service will jeopardize Equant's ability or authority to provide Equant services in any jurisdiction. In the event of such refusal, suspension, or discontinuation of Services, the Parties will consult with each other in an attempt to find an alternative solution, if any that would allow the provision of Services to that Location. The amount of any Shortfall as set forth in Clause 1 of Annex 1-F shall be Services commitment will be reduced for the Customer as appropriate for Services discontinued under this Clause 7.2 with no alternative solution provided by Equant.

8 Benchmarking

8.1 Overview

- 8.1.1 This Clause 8 of Service Annex 1 defines the process for benchmarking the Services.
- 8.1.2 Benchmarking will be carried out to provide an independent view of the Median Charge for Comparative Services.
- 8.1.3 The benchmarking shall occur during the eighteenth (18th) month of Term of this Agreement or as agreed to by the Parties.

8.2 Definitions

In this Clause 8:

"Comparative Services" means the services provided by at least two (2) reasonably comparable global service suppliers selected by the Independent Adviser that are reasonably comparable to the Services being benchmarked in respect of (a) geographic availability; (b) service levels; and (c) functionality.

"Regions" means (1) North, South and Central America, (2) Europe, (3) the Asia/Pacific region and (4) the rest of the world.

"Independent Adviser" means Gartner Group, GIGA, Ovum or such other independent third party adviser agreed in writing by the parties from time to time.

"Median Charge" means, in respect of Comparative Services, the median market price for such services identified by the Independent Adviser.

8.3 Selection of the Independent Adviser

- 8.3.1 The Parties will agree to the selection of the Independent Adviser. The Independent Adviser chosen will be responsible for all subsequent benchmarking of the Services, unless the Parties agree otherwise.

- 8.3.2 The Independent Adviser will be jointly instructed by the Parties and, subject to Clause 8.4.7 below, the Parties will share the Independent Advisor's costs equally. The instruction to the Independent Adviser will specify the number of Comparative Services to be considered in the benchmarking process. There will be a single brief for the Independent Adviser, produced jointly by the Parties, except where there are differences between the Parties' requirements for that brief. In these circumstances, there will be a single joint brief, together with a document from each Party, in which each explains their respective differences. The Independent Adviser will decide in his sole discretion how to resolve any such differing requirements.

8.4 Process

- 8.4.1 Benchmarking may be invoked for any or all Services then provided to Customer by Equant, in any or all Regions. Where the Services to be benchmarked are provided across a Region, the benchmarking will be conducted against the whole of such Region and not against any individual country or countries.
- 8.4.2 The Independent Adviser will identify the Comparative Services against which the Services are to be benchmarked.
- 8.4.3 Where in his sole judgment it is appropriate, the Independent Adviser will adjust the applicable charges for Comparative Services to take account of any material differences between the Comparative Services and the Services then provided by Equant to Customer, including differences in: (a) geographic availability; (b) service levels; (c) functionality; (d) service configuration and capacities; (e) service management and reporting; (f) security; (g) aggregate expenditure and volumes; (h) minimum commitment and available discounts; (i) contract term; and (j) the level of remedies provided under any service level agreement.
- 8.4.4 The applicable charges derived by the Independent Adviser for each Comparative Service, including any adjustment made pursuant to Clause 8.4.3 above, will then be aggregated, and the relevant Median Charge will be calculated. The Independent Adviser will then compare the Median Charge with the charges then payable by Customer to Equant for the relevant Service (including any relevant applicable discounts). The comparison will take full account of any elements of the charges that the Independent Adviser deems appropriate in his sole discretion (e.g. in addition to comparing fixed recurring service charges, the Independent Adviser may include connection charges in the relevant comparison).
- 8.4.5 For Services that comprise a number of options, e.g., CIR capacity options, the Independent Adviser may choose to benchmark a representative sample of what he considers to be the most frequently used options. Either party may object, on reasonable grounds, to the Independent Adviser's chosen options and the parties will resolve any such objection and agree to the relevant sample to apply prior to the Independent Auditor proceeding with the process. Any percentage change in charges resulting from the benchmarking of the relevant sample will then be applied to all options for that Service and aggregated to derive a new Median Charge. Where there are a range of available prices within a Service, the Independent Adviser will use his sole discretion to determine the Median Charge for that Service in order to produce a fair and reasonable balance between the various prices.
- 8.4.6 Where the Median Charges for a Service are less than the charges then charged by Equant to Customer for such Service, Customer will have the right to request Equant to reduce its Charges to match the relevant Median Charges to take effect from the first (1st) of the month following completion of the process ("**Date of Effect**").
- 8.4.7 If Equant does not reduce its Charges in accordance with Clause 8.4.6 above, Customer may, within forty-five (45) days of the Date of Effect:
- 8.4.7.1 terminate the Services in the relevant Region under this Agreement, on thirty (30) days prior written notice to Equant; or

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- 8.4.7.2 terminate this Agreement on thirty (30) days prior written notice to Equant, where the Services that may be terminated pursuant to Clause 8.4.7.1 above constitute at least forty percent (40%) (by volume of charges) of all Services then being provided to Customer by Equant under this Agreement;
- 8.4.7.3 in both such events, Equant shall be responsible for full payment of the Independent Advisor's costs for the relevant benchmarking exercise.
- 8.4.8 Any dispute between the parties relating to this Clause 8 which is not resolved within ten (10) business days of notice of the dispute by either party shall be escalated by both parties to their respective senior management. If the dispute is not settled by senior management within ten (10) business days of escalation, either party shall be entitled to initiate the dispute resolution process pursuant to Clause 12 of this Agreement.

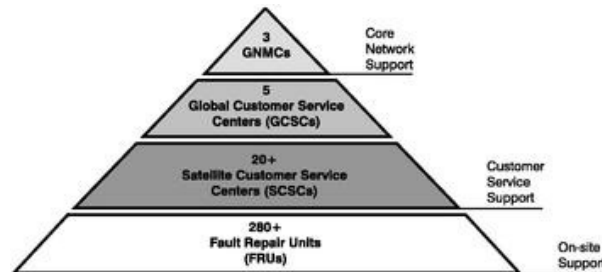
Annex 1-B—Network Services Support

1. Help Desk

Access to help desks at certain locations notified by Equant, via which Customer and Users may obtain technical advice and guidance on the operation and use of the Service. Customer understands that the location of the help desks is subject to reasonable change at any time. These help desks will be available 24 hours a day, 7 days a week, to answer all Service related queries to Customer's and Users designated personnel. Equant will use its reasonable efforts to respond promptly on any query that is related to the Services.

2. Global Support

- 2.1. Equant's multi-tiered support structure is available to serve the needs of customers in more than 200 countries. All support personnel can speak English and are either indigenous to the local country or are fluent in one or more of nearly 40 local languages.
- 2.2. Equant takes responsibility for managing network access between all sites, even where the network path crosses many national boundaries. Each service center is equipped with comprehensive trouble and fault diagnosis hardware.
- 2.3. Equant support is organized as a pyramid based on 3 levels of support: core network support, customer service support, and on-site support. These support levels and the key functions of the hierarchy are illustrated below:



3. Support Levels

3.1. Core Network Support

Ultimate responsibility for network management is assigned to 3 network management centers in Paris, Tulsa, and Singapore. These 3 centers, referred to as Global Network Management Centers (**GNMCs**), use a follow-the-sun approach to provide 24 hour central control and visibility over the core backbone network, 7 days a week, three hundred sixty-five (365) days a year. The 3 GNMCs maintain the integrity of the core backbone and also serve as a final escalation point for the most complex of customer network issues.

3.2. Customer Service Support

- 3.2.1. Equant's 5 Global Customer Service Centers (**GCSCs**) provide the first level of customer support on a twenty-four hour/seven day basis. The 5 GCSCs, located in Atlanta, Cairo, London, Rio de Janeiro and Sydney, each have global visibility of the entire network and maintain full ownership of all faults reported. The GCSCs are supported by more than 20 satellite Customer Service Centers, which handle in-country fault management activities for countries with regulatory, technical or linguistic restrictions.
- 3.2.2. Located within the GCSCs are the Proactive Surveillance Units, which provide constant monitoring of selected customers that have subscribed to Equant's managed router solutions.

- 3.2.3. The GCSCs are further supported by Equant's Internetwork Operation Centers, which provide local LAN Access, Intranet Connect, and VPN support for customers and operations; the Applications Referral Centers, which deliver support of core network application-based problems; and Equant's Centers of Excellence, which provide the highest level of technical expertise in resolving service-specific problems.

3.3. On-site Support

At the local level, Equant's entire organization is supported by multiple Fault Repair Units (**FRUs**), which are part of Regional Service Operations. The FRUs maintain local presence in over 280 cities in more than 150 countries. The FRUs facilitate the repair and service of local nodes, connections and customer equipment as well as manage the relationship with local TO service providers.

3.4. Fault Management

3.4.1. Fault Reporting

- (a) Upon the Customer's detection or notification of a fault, the Customer will open a trouble ticket with the GCSC. The GCSC staff will retrieve the Customer site file from the trouble ticket database, confirm the user code and address, and initiate the appropriate action.
- (b) The GCSC will commence standard procedures to properly address all problems and restore the Service within the shortest possible period of time.
- (c) All GCSCs utilize Equant's single global trouble ticket system to log and track reported faults. This system provides global visibility of all faults and associated activities to all network operations and support staff. In order to assist Customer in its fault monitoring and management, Equant offers Customer the optional Web Vision, TT Vision and i Vision customer service tools at no charge, so Customer can obtain real-time access to this system to check the status and add comments to the ticket.

3.4.2. **Fault Diagnosis**

The GCSC personnel will initiate a step-by-step fault diagnosis process that will allow them to diagnose the problem and take the appropriate corrective action. This may include dispatching a technician, or referring the fault to the local TO or one of our internal Centers of Excellence. In cases where the problem is identified to be at the remote end, the trouble ticket will be referred to the appropriate local customer service center while maintaining trouble ticket ownership to resolution.

3.4.3. **TO Problems**

If the problem is identified as within the local TO's responsibility, GCSC personnel will open a trouble ticket and route the problem directly to the local TO supplier. The trouble ticket will remain open until the problem has been resolved and the user confirms that the service has been restored back to normal. During this time, ownership of the trouble ticket stays with the Equant GCSC and they will keep Customer apprised of the status and escalate as required.

3.4.4. **Equipment Problem**

If the problem is diagnosed as caused by an Equant-supplied equipment component, the trouble ticket will be routed to the local field service unit, who will arrange to dispatch a technician under the terms of Customer's maintenance agreement. Once the fault has been resolved, the field support engineer will contact the local customer service center and request confirmation that service has been restored with the local user and close the trouble ticket.

3.4.5. **Network Problems**

Any problem identified as a fault in the Equant network will be routed to the Network Operations staff and/or the appropriate Center of Excellence. After the fault has been cleared, it will be referred back to the GCSC, which will check with the local site prior to closing the trouble ticket.

3.4.6. **Closing Trouble Tickets**

Once the fault has been reported as resolved it will be placed in "cleared" status. The GCSC staff will then contact Customer's contact and request confirmation that the fault is in fact resolved. Only after the GCSC staff has received this confirmation can the trouble ticket be closed.

3.4.7. **Escalation Process**

If the trouble ticket is not immediately resolved, the trouble ticket is automatically escalated using a predefined time scale. The Equant escalation process is designed to provide a high level of management visibility within Network Operations to ensure every possible action is being taken to resolve the fault.

The following is a general guideline for an automated management notification:

Level	Elapsed Time	Function
1	2 hours	Unit Supervisor/COM (if assigned)
2	4 hours	CSC Manager
3	6 hours	Regional CSC Director
4	24 hours	GCSC Director
5	48 hours	VP of Global Customer Service

Managerial escalation should occur anytime it is felt that involvement of the next level manager is required to resolve a

problem. Managerial escalation times are based on the judgment of the problem owner.

3.5. Tail Circuit Management

Tail Circuit management services for all Tail Circuits, includes:

- ordering and management of the connection of Tail Circuits, modems and other communications equipment from the relevant TOs or other third party vendors as applicable; in the event Equant is unable to order Tail Circuits due to regulatory impediment, Customer agrees to order them in its own name;
- testing and acceptance of Tail Circuits, modems and other communications equipment;
- notification of Tail Circuit faults both to Customer and the relevant TO upon Equant becoming aware of the faults and the coordination and expediting of Service restoration;

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- payment to TOs and other third party vendors in local currency on Customer's behalf, where applicable. However, this service does not affect Customer's liability with respect to such Tail Circuits, modems or other communications equipment and all sums paid by Equant to TOs or other third party vendors in respect thereof will be reimbursed by Customer as more fully described in Annex 1-F.

3.6. Project Management.

Project management includes the creation and agreement of critical path schedules, liaison with Customer's designated network personnel, implementation and configuration of all Network connections and overall management of Customer's account.

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Annex 1-C—Network Services Acceptance Tests.

1. **Tail Circuits.** Equant will perform a 15 minute Bit Error Rate Test to ensure that no more than one error in 10^6 data bits occur on the Tail Circuit.
2. **Frame Relay Functionality Testing.** Equant will perform:
 - A test to confirm that a route DTE supporting Frame Relay attached via a Tail Circuit to a Node is able to establish link-level communications via a pre-designated local DLCI address with the Node local to the Site.
 - A test to confirm that application data is able to be successfully transferred up to the registered CIR level between Customer-sited router DTEs supporting Frame Relay, via PVC routers and pre-designated local DLCI addresses.
3. **IP Private Dial Testing.** Customer will be deemed to have accepted the Service at a Location upon issuance of a domain name.
4. **Alternative Testing.** Where TO operating conditions are such that the Acceptance Tests are not appropriate, Equant shall carry out alternative commissioning tests as agreed between the Parties. In this event, Equant will provide to Customer a written description of these alternative acceptance tests.

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Annex 1-D—Network Service Descriptions

1 Description Of Equant Frame Relay Service

1.1 Equant Frame Relay Service

The Equant Frame Relay Service is delivered on the Equant Global Network (EGN). Equant's Frame Relay service provides a Committed Information Rate based service with Burst Mode Options. Equant's Frame Relay service conforms to:

STANDARDS INSTITUTE	STANDARD	LIMITATIONS
Frame Relay Forum	"Joint Specification"	
Frame Relay Forum	UNI	
ANSI	T1.617 Annex D	
ITU-T (CCITT)	Q.933 Annex A	
ANSI	T.606; T1.606 addendum	

ANSI	T1.617—1991	
ANSI	T1.618—1991	Only 2 byte addressing No CLLM mechanism

1.2 Committed Information Rate

The *Committed Information Rate (CIR)*, is the amount of bandwidth that Equant agrees to make available to the Customer's Frame Relay Data Terminal Equipment through the Network, enabling the transfer of data between any given Frame Relay Permanent Virtual Circuit Ingress and Egress points during normal network operational conditions. CIRs are provided on a per individual Data Link Channel basis.

1.3 Excess Information Rate

The *Excess Information Rate (EIR)*, is the additional bandwidth that Equant agree to make available, to enable the transfer of data between any given Frame Relay Permanent Virtual Circuit Ingress and Egress points on a per Data Link Channel Basis. The value of the EIR will be an additional 50 percent of the CIR, on individual CIRs up to 128 Kbit/s, or the upper limit of the access line bandwidth, dependent on whichever sum is the lesser. The EIR will be made available as a sustained Network resource during normal Network operations. All data submitted within the EIR range is eligible to be discarded under adverse Network conditions.

1.4 Premium Burst Option

Premium Burst is an additional Equant Frame Relay service feature that provides additional bursting capacity of up to an additional 100% of the CIR value on any given individual CIR or the access line bandwidth, dependent on whichever sum is the lesser. The Premium Burst configurations will ensure that CIR will be equal to or greater than 25% of the Access Speed unless otherwise agreed by Equant.

The Premium Burst facility will be made available to Customer's Frame Relay DTE under the following terms and conditions:

Upon acceptance by Equant and subject to the payment of Charges by Customer, EIR may be configured subject to the limitations below:

EIR usage will be limited to either:

- (i) 15 million characters per day (for both directions) per 8kbps of CIR; or
- (ii) 450MB of total traffic (that is, the combined CIR and EIR usage) for both directions per month per 8 kbps of CIR.

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In the event that the EIR usage exceeds the limitations stated in above for (i) 2 consecutive months; or (ii) 3 out of any 6 consecutive months, Equant reserves the right, at its sole discretion, to take the steps set out below.

Equant may do either or both of the following:

- (i) upgrade the CIR to a level such that the EIR usage is within the limitations stated above; and
- (ii) downgrade (to a level as determined by Equant) or terminate EIR over the PVC.

Equant reserves the right to charge for the above upgrade or reconfiguration of EIR.

2. Description of Equant IP Private Dial Service

The Private Dial service enables access to hosts using a native LAN protocol via PSTN or ISDN, using point-to-point protocol (PPP). The service is accessed via a PC or a router. The PC requires no additional hardware beyond a terminal adapter or a modem, except an available serial Port (ie, any port on a PC that can support a dial modem connection) and client software supporting PPP and challenge handshake authentication protocol (CHAP).

To use the IP Private Dial Service, a user calls a public PSTN or ISDN telephone number that gives the user access to the network access server. The user's terminal, PC, or router then issues a CHAP user name, domain name, and encrypted password. The call is sent automatically to the router defined to be associated with the domain name specified via a layer 2 forwarding tunnel.

The IP Private Dial security server positively identifies the user as authenticated and having access to the network or LAN and then opens an IP session. Additional levels of security may also be procured (e.g., token-based systems, etc.). Please note that this process is handled by the client software; therefore, it is transparent to the user.

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Annex 1-E—Service Levels

1. Introduction.

In calculating Equant's performance using the metrics set forth below, Equant will only be liable for its obligations hereunder as they relate to the Service described in this Service Annex. Equant will not be liable for any required remedial actions if the failure to meet a Service Level was caused by the actions or inactions of (i) Customer or User; (ii) third parties; (iii) any events that would be deemed *Force Majeure* Event as defined in Clause 1 of the Agreement.

All words with initial caps are defined in Clause 9 of this SLA or Clause 1 of the Agreement.

2. **Conditions and Exclusions.** This SLA and the remedies set out are subject to the following conditions and exclusions:

- 2.1 Save only in respect of material breach of this Agreement, this SLA sets out Customer's sole and exclusive remedies for any failure by Equant to provide Services in accordance with this Agreement Equant's periodic routine, non-routine, or emergency maintenance of the Service, provided in a proper, non-negligent manner and in accordance with commercially prudent practices will not be deemed to be a failure of Equant to provide Services in accordance with this Agreement, or the breach of any SLA.
- 2.2 Customer must claim credits for unachieved SLA in writing within 120 days following the end of the month in which Customer believes the Service Level was not achieved. Within 30 days following receipt of the claim, Equant will confirm in writing to Customer the amount of the credit, if any, from reports generated by Equant. All credits will be issued within 60 days of Customer's written claim.
- 2.3 Customer's right of cancellation of a Service pursuant to Equant's failure to meet a SLA must be exercised within 120 days of Equant's written confirmation of that failure. If Customer does not notify Equant in writing of its election to cancel, the availability of that particular remedy expires.
- 2.4 Any termination of a Service or this Agreement by Customer due to Equant's failure to meet its SLA obligations is without financial liability to Customer, other than Customer's liability to pay for Service provided before the effective date of termination.
- 2.5 In no event will total credits due under for any unachieved SLA for any Location or Service in any month exceed 100% of the Qualifying Charges for that Location or Service in that month.
- 2.6 Service Levels for Service Availability, Latency and P Grade will apply from the first full month following the Date of Acceptance of the Service at the relevant Location.

3. **P Grade (IP Dial Services).**

- 3.1 Equant commits to an accessibility level of 99.5% during Peak Hours (as defined below) for all calls placed by Customer. This accessibility level is equal to 100 minus P-Grade indicator. P Grade means the probability of a call being blocked, during Peak Hours, due to access ports not being available for that call, which probability is expressed as percentage.

P Grade ratio = (accumulated duration in minutes of the maximum port occupancy in the period × 100) (reference threshold for the period) where—the reference threshold is set to 1500 minutes per week. Equant regularly monitors the P Grade levels in every rotary and targets to maintain it at levels below 0.5%. For purposes of this Clause 3.1, "Peak Hours" means the normal business hours of the city and country where the call is placed.

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- 3.2 If the accessibility level is not achieved in any Month, Customer will receive a credit of 10% of the previous Month's usage Charges via the relevant Node.

4. **Network Path Availability (Frame Relay)**

If an NPA Service Level is not met in any calendar month, Equant will grant Customer a credit against the monthly recurring Port and CIR charge for any affected Location, payable for the calendar month during which the Service Level has been breached.

This credit shall be an amount calculated as follows:

$$10 \times \frac{(NPA - \text{Actual NPA})}{NPA} \times \text{monthly port and CIR charge for the month concerned for the Location}$$

provided that no credit will be paid until the difference between the relevant NPA Service Level and the actual NPA is one tenth of one percent (0.10%) or greater. For example, if the NPA = 99.5%, the monthly Port and CIR Charges = \$1,800 and the actual NPA = 99.45%, then

$$10 \times (99.5 - 99.45) / 99.5 \times \$1,800 = \$9.05$$

5. **Network Transit Time (Frame Relay)**

If any NTT Performance Level is not achieved, Customer will receive a credit against the Qualifying Charges for the affected Locations, calculated as follows:

Actual NTT higher than NTT Service Level by less than 10%	No credit
-----------------------------------------------------------	-----------

Actual NTT higher than NTT Performance Level by greater than 10%

1% of Qualifying Charges for every 1% by which actual NTT is higher than the NTT Service Level, up to a maximum credit of 100% of Qualifying Charges for the affected Locations

Credits will be pro rated per millisecond.

6. **Maximum Time To Attend (MTTA).**

Equant commits to a MTTA of 4 hours (5 hours for Customer's Location in Carpinteria, California USA), provided that:

- 6.1 a call-out notification is received from Customer, and the call-out can be made during the normal business day in the country in which the Location is situated; and
- 6.2 the Location is situated within a 50 mile radius of the nearest Equant Service Center ("Normal Service"). This requirement does not apply to Customer's Location in Carpinteria, California USA. If a call-out notification is received and there are less than 4 hours remaining in the normal business day in the applicable country (5 hours with respect to Customer's Carpinteria, California Location), then the MTTA calculation will stop at the end of the normal business day and resume on the following normal business day.

Remedial service on CPE other than Normal Service will be carried out soon as is practicably possible, taking into account availability of service personnel, the time and date of Customer's notification and the country concerned.

Where Equant provides Normal Service, but does not achieve an MTTA of 4 hours or less (or 5 hours or less for Customer's Location in Carpinteria, California USA), Customer will receive a credit of \$150.00 up to a maximum of the Monthly CPE Charges, for each full hour that Equant delays commencement of its remedial activities.

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7. **Fault Management.**

Equant will:

- Issue a Trouble Ticket number to Customer when Customer reports each fault to Equant;
- Inform Customer of Outages identified by Equant and not reported by Customer no later than one (1) hour after detecting such faults;
- Provide Customer with copies of all Trouble Tickets opened.

If Customer can demonstrate that Equant has not achieved the above Service Levels in any Month, the Parties will meet to discuss the reasons and Equant will escalate to a senior Network manager for resolution.

All escalation of faults will be in accordance with the procedures described in Annex 1-B.

8. **Cancellation of Service.** In addition to any credits due for any unachieved SLA, in respect of all Service Levels, Customer shall be entitled to cancel the Service at a Location, or this Agreement in its entirety, in the following circumstances:

- If the maximum credit is due in two (2) consecutive months, or in any four (4) Months during any 12 month period, at any Location, Customer will be entitled to terminate the affected Service at the affected Location, by giving Equant at least 30 days prior notice.
- If the maximum credit is due in 2 consecutive months, or in any 4 months during any 12 month period, at more than 50% of the Locations, Customer will be entitled to terminate this Agreement in its entirety by giving Equant at least 30 days prior notice. For the purposes of this remedy, non-achievement of the Service Level at a Hub Location that causes non-achievement of the same Service Level at other Locations will be counted as one event.

The amount of any Shortfall, as defined in Clause 1 of Annex 1-F, shall be reduced accordingly in the event of a cancellation of Service under this Clause 8.

9. **Definitions**

"Acceptance Tests"

means the processes employed by Equant to determine that the Services are properly performing.

"Accessibility Level"

means the probability of accessing a free Port on a dial modem bank.

"Back-Up"

means either automatic ISDN back-up or redundant Tail Circuits with automatic switching capability on a separate circuit path to the Tail Circuit. Back Up for Hub Locations must include equivalent service levels and diverse routing.

"CIR"	or " Committed Information Rate " means the amount of bandwidth that is made available to Customer on the end-to-end path between the Network Entry Access Node and the Network Exit Access Node.
"EIR"	or " Excessive Information Rate " means the feature that allows Users to send bursts of data that exceed the CIR allocated bandwidth. All frames within the EIR range are tagged to denote they are eligible for discarding if network congestion occurs.

"Entry Access Node"	means the access node to which the originator data terminal equipment is connected.
"Exit Access Node"	means the access node to which the destination data terminal equipment or host computer is connected.
"Hub Location"	means the Location(s) designated as a hub or host Location by Customer.
"MTTA"	or " Mean Time To Attend " means the average time it takes for authorized Equant field personnel to arrive at the Customer Location in the event of a fault, failure or malfunction of the CPE that cannot be repaired or restored remotely.
"Node"	means a node of the Network to which Customer is connected via a Tail Circuit or to which Customer dials in, such Nodes being deployed at such times and places as determined by Equant.
"NPA"	or " Network Path Availability ", means the availability of the virtual communication path between the Entry Access Node and the Exit Access Node on the Network excluding Scheduled Maintenance, host links, Tail Circuits, and CPE. NPA is measured on a monthly basis.
"Network Transit Time"	or " NTT " means the elapsed time taken for the one way transmission of a one hundred twenty-eight (128) character length packet (a "Packet") between the entry point on the Network Node to which Customer's transmitter of the Packet is connected, and the exit point on the Network Node to which the receiver of the Packet is connected, averaged over a calendar month. NTT excludes Tail Circuits and CPE.
"Outage"	means the non-availability of the Service at a Location, specifically that Customer or User cannot send or receive data using the Service.
"P Grade"	means a monthly measurement of congestion (or blocking) at the X.28/RLA/PPP rotary, expressed as a percentage, excluding availability and quality of the PSTN from the user to the rotary.
"Qualifying Charges"	means all monthly recurring Charges excluding Tail Circuit Charges and all one-time charges, including installation, project management and professional services charges.
"Scheduled Maintenance"	means maintenance scheduled by Equant to occur during low network traffic periods three to five times per year to implement generic changes to, or generic version updates of, the Network and lasting an average of five minutes each.
"Third Party Intervention"	means intervention by any person not authorized by Equant.

Schedule 1—Service Levels

LOCATION	NTT (ms)	NPA (%)
Host Location		
Carpinteria, CA USA	N/A	99.99%

Carpinteria, CA USA	N/A	99.99%
Mt. Laurel, NJ	N/A	99.99%

Remotes to Carpinteria, California

Nieuwegein, Netherlands	139	99.99%
Wanchai, Hong Kong	100	99.99%
Sydney, Australia	114	99.99%
Mumbai, India	190	99.99%
Mexico City, Mexico	80	99.99%
Limerick, Ireland	145	99.99%
Sao Paulo, Brazil	140	99.99%
Grand Rapids, Michigan USA	95	99.99%
Chicago, Illinois USA	91	99.99%
Powell, TN USA	60	99.99%
Rancho Pales Verdes, CA USA	30	99.99%
San Mateo, CA USA	30	99.99%

Remotes to Mt. Laurel

Grand Rapids, Michigan USA	40	99.99%
Chicago, Illinois USA	40	99.99%
Rancho Pales Verdes, CA USA	60	99.99%

Remotes to Nieuwegein, Netherlands

Alfortville, France	40	99.99%
Annecy, France	40	99.99%
Hoofddorp, Netherlands	30	99.99%
Istanbul, Turkey	55	99.99%
Willich, Germany	30	99.99%
Wroclaw, Poland	40	99.99%
Dudley, UK	30	99.99%
Durban, South Africa	128	99.99%

Milan, Italy	30	99.99%
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Remote to Durban

Johannesburg, South Africa	40	99.99%
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Remote to Milan

Turin, Italy	30	99.99%
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Remotes to Hong Kong

Bangkok, Thailand	58	99.99%
Singapore	47	99.99%
Tokyo, Japan	40	99.99%
Remote to Tokyo		
Osaka, Japan	30	99.99%
Remotes to Sydney, Australia		
Adelaide, Australia	40	99.99%
Melbourne, Australia	35	99.99%
Milton, Australia	35	99.99%

Annex 1-F—Pricing

1. Services Commitment

Customer agrees that it shall have paid or shall be due to pay One Million One Hundred Twenty Thousand Dollars (\$1,120,000) in "Qualifying Charges" (as defined below) under this Agreement ("**Services Commitment**") during the period commencing on the Effective Date and ending twelve (12) months from that date, and during each consecutive twelve (12) month period during the Term of this Agreement (or a pro-rated amount for any portion thereof) thereafter (each such consecutive twelve (12) month period referred to as an "**Annual Period**").

The term "**Qualifying Charges**" shall refer to all Charges for the Services ordered under this Agreement, including all Tail Circuit charges and charges for CPE.

Should the actual Qualifying Charges invoiced to Customer during any Annual Period be less than the Services Commitment, Equant shall invoice, and Customer shall pay, the difference between the actual Qualifying Charges invoiced to Customer during the applicable Annual Period and the Services Commitment ("**Shortfall**") in accordance with Clause 4 of the Agreement.

2. Charges

Charges for the Service are set out in the following tables attached to this Annex 1-F (collectively, the "**Table**"). Charges shall be invoiced and paid in accordance with Clause 4 of this Agreement.

3. Commencement of Charges

All Charges shall commence from the Date of Acceptance of the Service at a Location except that: (a) Tail Circuit Charges shall commence from the date of installation of the Tail Circuit at a Location by the TO; (b) any Software license fees shall commence from the date of delivery of the Software to Customer.

4. Monthly Recurring/One Time Charges

Unless otherwise stated, all Charges set out in the Table are monthly recurring. All connection, disconnection and project management charges are one time only charges.

5. Tail Circuit Charges

Tail Circuit Charges shall be as set out in the Table or otherwise as notified by Equant from time to time.

6. Network User Identifier ("NUI") Charges

NUI Charges shall be \$10 per NUI per month plus a one time set up Charge of \$10 per NUI.

Table 1 to Annex 1-F Zones for Remote IP Dial Charges

Group 1		Group 2		Group 3		Group 4	
*	*	*	*	*	*	*	*
Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	
*	*	*	*	*	*	*	*

Group 12	Group 13	Group 14	ROW
*	*	*	*

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

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Table 2 to Annex 1-F—IP Dial Usage Charges

Route	Group 1	Group 2	Group 3	Group 4	Group 5	Group 6	Group 7	Group 8	Group 9	Group 10	Group 11	Group 12	Group 13	Group 14	ROW
Domestic	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 1	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 2	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 3	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 4	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 5	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 6	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 7	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 8	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 9	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 10	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 11	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 12	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 13	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group 14	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
ROW	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

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Table 3 to Annex 1-F Monthly IP Dial Fixed Charges

Location	Tail Circuit Speed (kbps)	Port Speed (kbps)	CIR Speed (kbps)	Tail Circuit	Tail Circuit Mgmt.	Port	CIR	Managed Router	Monthly Total
Carpinteria, CA	T-1	384K	N/A	*	*	*	*	*	*
New Joy, Netherlands	E-1	512K	N/A	*	*	*	*	*	*
Mt. Laurel, NJ	T-1	512K	N/A	*	*	*	*	*	*
Hong Kong, HK	512K	256K	N/A	*	*	*	*	*	*
Sydney, Australia	512K	256K	N/A	*	*	*	*	*	*
TOTAL									*

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

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Table 4 to Annex 1-F—Frame Relay Charges

LOCATION	CIRCUIT	PORT	CIR	MONTHLY RECURRING CHARGES			
				CIRCUIT CHARGES	PORT CHARGES	CIR CHARGES	TOTAL CHARGES
Host Location							
Carpinteria, CA USA	1536K	1536K	N/A	*	*	*	*
Carpinteria, CA USA	1536K	512K	N/A	*	*	*	*
Mt. Laurel, NJ	1536K	512K	N/A	*	*	*	*
Remotes to Carpinteria, California							
Nieuwegein, Netherlands	2048K	2048K	768K	*	*	*	*
Wanchai, Hong Kong	512K	512K	256K	*	*	*	*
Sydney, Australia	512K	512K	256K	*	*	*	*

Mumbai, India	2048K	512K	128K	*	*	*	*
Mexico City, Mexico	256K	256K	192K	*	*	*	*
Limerick, Ireland	384K	384K	256K	*	*	*	*
Sao Paulo, Brazil	256K	256K	96K	*	*	*	*
Grand Rapids, Michigan USA	256K	256K	192K	*	*	*	*
Chicago, Illinois USA	256K	256K	64K	*	*	*	*
Powell, TN USA	128K	128K	96K	*	*	*	*
Rancho Pales Verdes, CA USA	56K	56K	16K	*	*	*	*
San Mateo, CA USA	384K	384K	256K	*	*	*	*

Remotes to Mt. Laurel

Grand Rapids, Michigan USA	256K	256K	24K	*	*	*	*
Chicago, Illinois USA	256K	256K	64K	*	*	*	*
Rancho Pales Verdes, CA USA	56K	56K	16K	*	*	*	*

Remotes to Nieuwegein, Netherlands

Alfortville, France	128K	128K	48K	*	*	*	*
Annecy, France	128K	128K	96K	*	*	*	*
Istanbul, Turkey	128K	64K	48K	*	*	*	*
Willich, Germany	128K	128K	64K	*	*	*	*
Wroclaw, Poland	256K	256K	48K	*	*	*	*
Dudley, UK	E-1	768K	256K	*	*	*	*
Durban, South Africa	128K	128K	64K	*	*	*	*
Milan, Italy	256K	256K	128K	*	*	*	*

Remote to Durban

Johannesburg, South Africa	128K	128K	48K	*	*	*	*
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Remote to Milan

Turin, Italy	128K	128K	64K	*	*	*	*
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Remotes to Hong Kong

Bangkok, Thailand	256K	128K	64K	*	*	*	*
Singapore	128K	128K	96K	*	*	*	*
Tokyo, Japan	256K	256K	192K	*	*	*	*

Remote to Tokyo

Osaka, Japan	64K	64K	32K	*	*	*	*
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Remotes to Sydney, Australia

Adelaide, Australia	128K	128K	64K	*	*	*	*
Melbourne, Australia	256K	256K	96K	*	*	*	*
Milton, Australia	128K	128K	64K	*	*	*	*

Total				*	*	*	*
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- Notes:
- 1) There are no installation charges specified for the above Locations because the Service is already installed at these Locations as of the Effective Date.
 - 2) There will be a one-time project management charge applied for each Change Order submitted.
 - 3) Charges for Web Vision, TT Vision and I Vision are waived for Customer during the Term.
 - 4) The Charges above include one (1) Customer Operations Manager.

* Confidential portions omitted and filed separately with the Securities and Exchange Commission.

STANDARD FORM OF AGREEMENT BETWEEN

OWNER AND CONSULTANT

FOR THE

QAD ORTEGA HILL PROJECT

AGREEMENT

made as of the 12th day of June, in the year 2002

BETWEEN the Consultant's client identified as the Owner

QAD Inc.
6450 Via Real
Carpinteria, CA 93013

and the Consultant:

Ove Arup & Partners California
2440 S. Sepulveda Boulevard
Suite 180
Los Angeles, CA 90064 USA

Consultant's Discipline or Services:

See Exhibit A

For the following Project:

QAD Ortega Hill

The Owner and Consultant agree as follows.

ARTICLE 1 DESCRIPTION OF SCOPE

The Consultant shall provide QAD with professional services as described in Exhibit A.

ARTICLE 2 GENERAL PROVISIONS

2.1 GENERAL

- 2.1.1** The part of the Project for which the Consultant is to provide services is hereinafter called This Part of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other part of the Project.
- 2.1.2** The Construction Manager, Paul Franz Construction, Inc. shall be the general administrator of the professional services for the Project, and shall facilitate the exchange of information among the consultants retained by QAD as necessary for the coordination of This Part of the Project.

ARTICLE 3 CONSULTANT'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

- 3.1.1** The services performed by the Consultant, Consultant's employees and Consultant's subconsultants shall be as enumerated in Articles 4 and 5.
- 3.1.2** The Consultant shall designate a representative authorized to act on behalf of the Consultant with respect to This Part of the Project. The Consultant's representative authorized to act on behalf of the Consultant with respect to This Part of Project shall be Catherine Wells unless otherwise designated by written notice from Consultant to the Construction Manager giving at least fourteen (14) days prior to the change.
- 3.1.3** The Consultant shall recommend to the Construction Manager that appropriate investigations, surveys, tests, analyses and reports be obtained as necessary for the proper execution of the Consultant's services.

- 3.1.4 The Consultant's services shall be coordinated with those of the Architect and other consultants for the Project in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's or other consultants' services.
- 3.1.5 The Consultant shall provide copies of drawings, reports, specifications and other necessary information to the Construction Manager, the Architect and other consultants for coordination and review during the course of the Project.
- 3.1.6 The Consultant shall not be responsible for the acts or omissions of the Construction Manager, Owner, Architect, Architect's other consultants, Contractor, Subcontractors, their agents or employees, or other persons performing any of the Work.
- 3.1.7 The Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner or the Construction Manager, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding.
- 3.1.8 The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The project schedule shall include allowances for periods of time required for the Construction Manager's, Owner's and Architect's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule shall not, except for reasonable cause, be exceeded by the Consultant or Architect. The Consultant shall not be responsible for delays beyond the Consultant's control.

3.2 EVALUATION OF BUDGET AND COST OF WORK

- 3.2.1 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Construction Manager engaged by the Owner for This Part of the Project represent Construction Manager's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor Architect has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices for This Part of the Project will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Consultant.
- 3.2.2 If the budget for the Cost of the Work for This Part of the Project is exceeded by the lowest bona fide bid or negotiated proposal, QAD shall
- .1 give written approval of an increase in the budget;
 - .2 authorize rebidding or renegotiating of the Project within a reasonable time;
 - .3 terminate in accordance with Paragraph 10.1.6 or
 - .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

If QAD chooses to proceed under Clause 3.2.5.4, the Consultant, as an additional service, shall modify the documents for which the Consultant is responsible, reducing the Cost of the Work for This Part of the Project as necessary to comply with the budget for the Cost of the Work. The Consultant shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

ARTICLE 4 SCOPE OF CONSULTANT'S SERVICES

4.1 DESIGN DEVELOPMENT

- 4.1.1 When authorized by Construction Manager or QAD, the Consultant shall prepare Design Development Documents from the Schematic Design studies approved by the Owner and confirmed by the Architect. The Design Development Documents shall consist of drawings and other documents to fix and describe This Part of the Project, including materials, equipment, component systems and types of construction or installation as may be appropriate, all of which are to be approved by the Owner and Architect.

4.2 CONSTRUCTION DOCUMENTS

- 4.2.1 When authorized by Construction Manager or QAD, the Consultant shall prepare, from the Design Development Documents approved by the Owner and confirmed by the Architect, Drawings and Specifications setting forth in detail the requirements for the construction of This Part of the Project, all of which are to be approved by the Owner and Architect. The Consultant shall prepare the Drawings and Specifications in such format as the Architect may reasonably require.
- 4.2.2 The Consultant shall assist the Construction Manager and the Architect as necessary in connection with the Owner's responsibility for filing the documents concerning This Part of the Project required for the approval of governmental authorities having jurisdiction over the Project.

4.3 BIDDING OR NEGOTIATION

- 4.3.1** The Consultant shall assist the Owner and Construction Manager in evaluating bids or negotiated proposals, and assist in awarding and preparing contracts for construction or installation.

4.4 CONTRACT ADMINISTRATION SERVICES

- 4.4.1** The Consultant's responsibility to provide the Contract Administration services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Consultant shall be entitled to a Change in Services in accordance with Paragraph 5.1 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.
- 4.4.2** The Consultant shall assist the Owner and Construction Manager in the administration of the Contract between Owner and Contractor with respect to This Part of the Project as set forth below.
- 4.4.3** The Consultant shall visit the site at intervals appropriate to the stage of the Contractor's operations for This Part of the Project as defined in Exhibit A, or as otherwise agreed with the Construction Manager or the Owner in writing, (1) to become generally familiar with and to keep the Construction Manager informed about the progress and quality of the portion of the Work completed for This Part of the Project, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work for This Part of the Project. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work for This Part of the Project, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
- 4.4.4** The Consultant shall report to the Construction Manager known deviations from the Contract Documents. However, the Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall be responsible for the Consultant's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 4.4.5** The Consultant shall at all times have access to the Work for This Part of the Project, wherever it is in preparation or progress.
- 4.4.6** Upon written request of the Construction Manager, the Consultant shall furnish to the Construction Manager and the Owner with reasonable promptness, in writing or in the form of drawings, interpretations of the Contract Documents prepared by the Consultant, if, in the opinion of the Construction Manager, such interpretations are necessary for the proper execution or progress of the Work.
- 4.4.7** The Consultant shall within a reasonable time render written recommendations on claims, disputes and other matters in question between the Owner and Contractor relating to the execution or progress of This Part of the Project as provided by the Contract Documents.
- 4.4.8** The Consultant shall assist the Owner and the Construction Manager in determining whether the Owner shall reject Work for This Part of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required.

- 4.4.9** The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals pertaining to This Part of the Project, such as Shop Drawings, Product Data and Samples; but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Following such appropriate action, the Consultant shall forward the Contractor's submittals to the Construction Manager for final disposition. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor, as required for this Part of the Project by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.4.10** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Construction Manager. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

- 4.4.11** The Consultant shall assist the Owner in preparing Change Orders and Construction Change Directives for This Part of the Project for the Owner's approval and execution in accordance with the Contract Documents, and may recommend to the Construction Manager minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

ARTICLE 5 OTHER SERVICES

5.1 CHANGE IN SERVICES

- 5.1.1** Change in Services of the Consultant other than a change required to bring This Part of the Project within the Project budget for the Cost of the Work, including services required of subconsultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Consultant's control, or if the Consultant's services are affected as described in Subparagraph 5.1.2. In the absence of mutual agreement in writing, the Consultant shall notify the Construction Manager and the Owner prior to providing such services. If the Owner or the Construction Manager deems that all or a part of such Change in Services is not required, and gives prompt written notice to the Consultant, then the Consultant shall have no obligation to provide those services. Except for a change due to the fault of the Consultant, Change in Services of the Consultant shall entitle the Consultant to an adjustment in compensation pursuant to Subparagraph 13.2.2, and to any Reimbursable Expenses described in Paragraph 12.6.

- 5.1.2** If any of the following circumstances affect the Consultant's services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
 - .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
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- .3 decisions of the Owner not rendered in a timely manner;
 - .4 significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
 - .5 evaluation of the Owner's or Contractor's proposals, including the preparation or revision of Instruments of Service, and provision of other services in connection with Change Orders and Construction Change Directives;
 - .6 providing consultation concerning replacement of Work resulting from fire or other causes during construction;
 - .7 failure of performance on the part of the Owner, the Owner's consultants or contractors;
 - .8 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
 - .9 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Consultant is party thereto;
 - .10 evaluation of substitutions proposed by the Owner or the Contractor after the award of the Contract for Construction;
 - .11 preparation of design and documentation for alternate bids or proposal requests proposed by the Owner;
 - .12 change in the Preliminary Project information contained in the Agreement between Owner and Architect; or
 - .13 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.

5.2 PROJECT REPRESENTATION SERVICES

- 5.2.1** If more extensive representation at the site than is described under Subparagraph 4.5.3 is required for This Part of the Project, the Consultant shall, if requested by the Owner, provide one or more Project Representatives to assist the Consultant in carrying out such additional on-site responsibilities.
- 5.2.2** Project Representatives shall be selected, employed and directed by the Consultant, and the Consultant shall be compensated therefor as agreed by the Owner and Consultant. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in an exhibit to this Agreement.
- 5.2.3** Through the presence at the site of such Project Representatives, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work for This Part of the Project, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Consultant as described elsewhere in this Agreement.

ARTICLE 6 ARCHITECT'S RESPONSIBILITIES

6.1 GENERAL

- 6.1.1 The Owner, through the Construction Manager, shall provide available information in a timely manner regarding requirements for and limitations on This Part of the Project. The Owner, through the Construction Manager, shall furnish to the Consultant, within 21 days after Construction Manager's receipt of a written request, information necessary and relevant for the Consultant to evaluate, give notice of or enforce lien rights.

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- 6.1.2 The Owner's Representative is the Construction Manager. The Owner or Construction Manager shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.
- 6.1.3 If the Consultant considers it necessary for This Part of the Project, the Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project, including surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.
- 6.1.4 On the Consultant's request for This Part of the Project, the Owner shall furnish to the Consultant, in a timely manner, (1) detailed layouts showing the location of connections, and (2) tabulations giving sizes and loads of equipment designed, specified or furnished by others for incorporation into other parts of the Project.
- 6.1.5 On the Consultant's request for This Part of the Project, the Owner shall furnish, in a timely manner, the services of geotechnical engineers. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.
- 6.1.6 The services, information, surveys and reports required by Paragraphs 6.3 through 6.6 shall be furnished at no expense to the Consultant, who shall be entitled to rely upon the accuracy and completeness thereof. The Consultant shall provide prompt written notice to the Construction Manager if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.
- 6.1.7 The Owner, through the Construction Manager, shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect with respect to This Part of the Project including any errors, omissions or inconsistencies in the Consultant's Instruments of Service.
- 6.1.8 The Architect employed by the Owner shall confer with the Consultant before issuing interpretations or clarifications of documents prepared by the Consultant and shall request the recommendation of the Consultant before providing interpretations or clarifications of Shop Drawings, Product Data, Samples or other submissions of the Contractor, or upon Change Orders and Construction Change Directives affecting This Part of the Project.
- 6.1.9 The Owner shall furnish to the Consultant a copy of the preliminary estimate or updated estimates of Cost of the Work as submitted to the Owner or Construction Manager, bidding documents, bid tabulations, negotiated proposals and Contract Documents, including Change Orders and Construction Change Directives as issued, to the extent that they pertain to This Part of the Project.
- 6.1.10 The Owner, through the Construction Manager, shall advise the Consultant of the identity of other consultants participating in the Project and the scope of their services.

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- 6.1.11 The Architect and the Construction Manager employed by the Owner shall review the Consultant's work for compliance with the Owner's program and for overall coordination with the architectural and engineering requirements.

ARTICLE 7 COST OF THE WORK

7.1 DEFINITION

- 7.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect and the Owner's consultants. The Cost of the Work for This Part of the Project shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Consultant.

- 7.1.2** The Cost of the Work or the Cost of the Work for This Part of the Project shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect or Consultant, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.
- 7.1.3** The Cost of the Work does not include the compensation of the Architect and the Owner's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 6 of this Agreement.

ARTICLE 8 INSTRUMENTS OF SERVICE

8.1 GENERAL

- 8.1.1** Drawings, specifications, and other documents, including those in electronic form, prepared by the Consultant are Instruments of Service for use solely with respect to this Project. Unless otherwise provided, the Consultant shall be deemed the author and owner of the Consultant's Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.
- 8.1.2** Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive license to reproduce the Consultant's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Such license shall authorize the Owner and the Owner's contractors and consultants to reproduce applicable portions of the Consultant's Instruments of Service solely for purposes of constructing, using and maintaining the Project. Any termination of this Agreement prior to completion of the Project as a result of any default by Owner shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of the Consultant's Instruments of Service and shall return to the Consultant within seven days of termination all originals and reproductions in the Owner's possession or control.

- 8.1.3** Except for the licenses granted in Paragraph 8.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party (except for successors in interest) without the prior written agreement of the Consultant. Submission or distribution of Instruments of Services to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant. The Owner shall not use the Consultant's Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Consultant which will not be unreasonably withheld or delayed. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant.
- 8.1.4** Prior to the Consultant providing to the Owner or the Construction Manager any Instruments of Service in electronic form or the Owner providing to the Consultant any electronic data for incorporation into the Instruments of Service, the Owner and Consultant shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.
- 8.1.5** The Owner and Consultant shall not make changes to the Instruments of Service without written permission of the other party.
- 8.1.6** The Consultant shall maintain on file and make available to the Owner design calculations for This Part of the Project, and shall furnish copies thereof to the Construction Manager and the Owner on request.

ARTICLE 9 DISPUTE RESOLUTION

9.1 MEDIATION

- 9.1.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of alien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- 9.1.2** The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 9.1.3** The parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

9.2 ARBITRATION

- 9.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 9.1.
- 9.2.2** Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.
- 9.2.3** A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 9.2.4** An arbitration arising out of or related to this Agreement may be consolidated with an arbitration between the Owner and any other person or entity if such arbitration involves common issues of fact relating to the performance by the Consultant of the Consultant's obligations under this Agreement.
- 9.2.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

9.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

- 9.3.1** The Owner and Consultant waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 10.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 GENERAL

- 10.1.1** If the Owner fails to make payments to the Consultant in accordance with this Agreement within ten (10) business days after written notice from Consultant, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, prior to suspension of services, the Consultant shall give seven days' written notice to the Owner. In the event of such a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted. Owner shall have the right to terminate this Agreement in the event a default is not cured by Consultant within ten (10) business days after written notice from Owner.
- 10.1.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for reasonable expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.
- 10.1.3** If the Project is suspended for more than ninety (90) consecutive days by either party, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

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- 10.1.4** Owner may terminate this Agreement upon not less than seven (7) days' written notice.
- 10.1.5** In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Article 10.1.6.
- 10.1.6** Termination Expenses are in addition to compensation for the services of the Agreement and include reasonable expenses directly attributable to termination for which the Consultant is not otherwise compensated.

ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 GENERAL

- 11.1.1** This Agreement shall be governed by the law of the principal place of business of the Owner, unless otherwise provided in Article 14.
- 11.1.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Construction Manager Version Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement.

- 11.1.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitation commence to run any later than the date when the services are substantially completed.
- 11.1.4** To the extent damages are covered by property insurance during construction, the Owner and Consultant waive all rights against each other, contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, Construction Manager Version, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement. The Consultant or the Architect, as appropriate, shall require of the Owner, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
- 11.1.5** The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without the written consent of the other, except that Owner may assign this Agreement to Owner's lender(s) and Consultant shall execute any reasonable consent in connection therewith that is requested by such a lender.
- 11.1.6** This Agreement represents the entire and integrated agreement for This Part of the Project between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.
- 11.1.7** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.
- 11.1.8** Unless otherwise provided in this Agreement, the Owner and Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

ARTICLE 12 PAYMENTS TO THE CONSULTANT

- 12.1.1** Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly within thirty (30) days presentation of the Consultant's statement of services to the Construction Manager. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Consultant has been adjudged to be liable.
- 12.1.2** If and to the extent that the time initially established in Subparagraph 13.4.1 of this Agreement is exceeded or extended through no fault of the Consultant, reasonable compensation for services rendered during the additional period of time shall be computed on an hourly basis as additional services.
- 12.2 REIMBURSABLE EXPENSES**
- 12.2.1** Reimbursable Expenses are in addition to compensation for the Consultant's services and shall mean reasonable expenses incurred by the Consultant and Consultant's employees and subconsultants directly related to the Project, of the types generally described in the following Clauses:
- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
 - .2 fees paid for securing approval of authorities having jurisdiction over the Project;
 - .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
 - .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
 - .5 renderings, models and mock-ups requested by the Owner; and
 - .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner or Architect in excess of that normally carried by the Consultant.
- 12.2.2** Records of Reimbursable Expenses and expenses pertaining to a Change in Services and services performed on the basis of hourly rates shall be available to the Owner and Construction Manager at mutually convenient times.

12.3 INSURANCE

- 12.3.1** The Consultant shall obtain insurance in the amount of \$1,000,000 covering claims arising out of the performance of professional services under this Agreement and caused by errors, omissions or negligent acts for which the Consultant is liable. The Consultant shall maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of the applicable statutes of limitations. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force by the Consultant for three (3) years.
- 12.3.2** Unless otherwise agreed, the Owner and Consultant shall each provide insurance to protect themselves from claims under workers' compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

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- 12.3.3** The insurance required pursuant to Subparagraphs 12.3.1 and 12.3.2 shall be in not less than the minimum limits required by law.
- 12.3.4** The Consultant shall promptly furnish to the Owner certificates of insurance evidencing the insurance required by Subparagraphs 12.3.1 and 12.3.2, including appropriate evidence that each type of insurance includes appropriate coverages for this specific Project. Certificates shall contain provisions that at least 30 days' prior written notice will be given to the Construction Manager in the event of cancellation, reduction in or nonrenewal of the insurance.

ARTICLE 13 BASIS OF COMPENSATION

See Exhibit A.

13.1 ADDITIONAL PROVISIONS

The Owner and Consultant agree that:

- 13.1.1** If services covered by this Agreement have not been completed within thirty months of the date hereof, through no fault of the Consultant for This Part of the Project, extension of the Consultant's services beyond that time shall be compensated on the basis of hourly rates as provided in Exhibit A.
- 13.1.2** The rates set forth for services shall be annually adjusted in accordance with normal reasonable salary review practices of the Consultant. Consultant agrees to inspect upon (a) substantial and (b) final completion and issue certificates to Architect and Owner at those points.

13.1.3 PAYMENT PROVISIONS

(Insert provisions as to conditions, contingencies, times, manner and other particulars concerning payments, including any provisions for the payment of interest.)

This Agreement entered into as of the day and year first written above.

/s/ K. M. FISHER

OWNER *(Signature)*

K. M. Fisher, CFO

(Printed Name and Title)

/s/ S. CARTER

CONSULTANT *(Signature)*

S. Carter, Principal

(Printed Name and Title)

BY FAX AND MAIL

Mr. Paul Franz
Paul Franz Construction Inc.
3749 Santa Claus Lane
Carpenteria, CA 93013

ARUP

Dear Mr. Franz:

**QAD Ortega Hill Campus Phase I
Revised Proposal to Provide Building Engineering Services (2nd Revision)**

We are excited to hear that this project is going forward again and that QAD has invited us to be part of a team once more. We enclose our *revised* fee proposal and scope of services for the structural, mechanical, electrical and plumbing engineering design for the shell and core phase on this project.

PROJECT DESCRIPTION

The project is a new 88,5000 gross square foot headquarters building for the QAD software company located in Carpenteria, in Santa Barbara County. The building is single story with a partial basement. Phase I includes only the design of the shell and core of the building. The tenant improvements will be a separate, future phase. The current building construction cost is estimated at \$15,635,138.00 and the design schedule is fast-track.

SCHEDULE

Arup Los Angeles currently employs over 120 technical staff in its Los Angeles office. If appropriate this can be augmented with additional staff from our other US offices. We understand that the project schedule is currently under review, but we are aware of the urgency to occupy the building and will work with QAD, the architect and the construction team to provide engineering services to meet QAD's goals.

SCOPE OF WORK

Ove Arup & Partners California Ltd. (OAPCAL) will provide standard consulting structural, mechanical, electrical and plumbing engineering design services from the schematic design phase of the project through construction administration. Cost estimates will be provided at each phase by a *construction manager* employed by the Owner. OAPCAL will provide assistance in analyzing these estimates.

Our services relate to the design of building systems typically located at defined positions not more than 5'-0" from the building envelope. These services will be provided under an AIA C141 (1997) Standard Form of Agreement between Owner and Consultant augmented by the Scope of Building Engineering Services document attached to this proposal. At this point, we have not received a copy of the Owner/Consultant contract. We reserve the right to review our conditions upon review of it. We have listed separately services that are excluded from our proposed scope of work.

BUILDING ENGINEERING FEES

The attached fees are based on our current understanding of the project as represented by the project cost estimate prepared by Melchiori Construction Co., dated February 7th, 2002 with an estimated building construction cost of \$15,635,138.00 (shell and core—\$10,323,875.00 and tenant improvements—\$5,311,263.00). However, we would welcome the opportunity to negotiate fees based on any additional information that you may provide. We propose building engineering fees as outlined below.

SHELL AND CORE FEES

The fees are based on a building shell and core construction cost of 2.7% of \$10,323,875, for basic services related to structural, mechanical, electrical and plumbing engineering for the shell and core design for the Design Development through Construction Administration phases. The fees have been separated by phase, however our proposal is based on the assumption that we will be providing services for all phases. Our scope includes fitout of the core spaces, the lobbies, MEP supply to a single point of connection in the kitchen and HVAC for the data center. The following items are additional to this basic fee.

1. Update to current building code requirements

The existing building design was based on the 1994 code requirements and so a complete re-design of the mechanical work done to date and the building lateral system is needed to meet current codes and this also has impacts on the architectural design. This will result in an updated set of drawings for costing and Owner approvals. The design development fee indicated in the schedule below covers this re-work.

2. *Integration of structure, systems and ceiling heights*

The site constraints on the overall building height, combined with QAD's desire to maximize internal ceiling height, require the MEP and structural systems to be carefully coordinated together, unlike typical shell and core construction where structure and services are separate. We propose an additional lump sum fee of \$40,000 to do sizing and preliminary distribution plans for the MEP systems in all the TI spaces and to modify structure and ductwork to best achieve the required ceiling heights. This information will be documented for use by the TI designer.

3. *Mechanical Title 24 analysis*

In order to retain the existing architectural concept as much as possible, while meeting the new Title 24 energy conservation requirements, we are carrying out a specialized performance analysis of the building, rather than the standard prescriptive code approach. This requires additional analysis in both the design development and construction administration phases and for this we propose an additional lump sum fee of \$25,000.

4. *Site Lighting*

We have also been asked to include the design of site and parking lot lighting in our scope, including selection of fixtures in conjunction with the architect and preparation of plans. We will also provide a lighting level plan based on the selected fixtures. We propose a fee of \$4,000 including one trip to Santa Barbara County. QAD will be responsible for obtaining any necessary approvals from the local neighborhood jurisdictions.

TENANT IMPROVEMENT FEES

These fees are based on 84,000sf of space, including offices, conference rooms, fitness center, visitor center and data center. There is also a kitchen, which will be designed by a specialist kitchen consultant.

For this scope of work, we propose a fee of \$120,000. If we are awarded the TI scope in addition to the shell and core, we will charge only \$20,000 fee under shell and core design services for integration of structure, systems and ceiling heights.

Should the program change in scope or area or the budget change once it is established in later phases, we would amend our fees as appropriate. In addition, our fee proposal is based on seamless continuity between phases, and any delays in the project not the fault of the design team, will be subject to negotiated demobilization and mobilization costs. We do understand that there will be the obligatory review periods by the user groups and facilities personnel, as well as plan check by the governing agencies.

This proposal is based on our invoicing monthly through each phase of the project, and receiving payment within 45 days of invoice.

SHELL AND CORE FEES

Phase	Phase Split	Structural, Mechanical, Electrical and Plumbing Shell and Core Engineering Fees
Design Development	22%	\$ 61,324.00
Construction Documents	44%	\$ 122,648.00
Bidding / Negotiations	6%	\$ 16,725.00
Construction Administration	28%	\$ 78,048.00
Sub-Total	100.00%	\$ 278,745.00
Integration of Systems	—	\$ 40,000.00
Mechanical Title 24 Analysis	—	\$ 25,000.00
Site Lighting	—	\$ 4,000.00
Total	—	\$ 347,745.00

TENANT IMPROVEMENT FEES

Phase	Phase Split	Structural, Mechanical, Electrical and Plumbing Tenant Improvement Engineering Fees
Schematic Design	15%	\$ 18,000.00
Design Development	15%	\$ 18,000.00
Construction Documents	40%	\$ 48,000.00
Bidding / Negotiations	5%	\$ 6,000.00
Construction Administration	25%	\$ 30,000.00
Sub-Total	100.00%	\$ 120,000.00

QUOTED FEES ASSUMPTIONS

- Our fee is based on a design development plus construction document phase schedule of a total of ten (10) months. Should that time period be extended beyond eleven (11) months, we will assess an additional service charge of \$5,000.00 per month.

2. If the project is placed on hold, we will be assessing an additional start up and mobilization fee of \$10,000.00 when the project resumes.
3. We reserve the right to stop work if fees are not received 60 days after issuing an invoice.
4. Invoices older than 60 days will attract a backdated finance charge of 1.5% per month.

ADDITIONAL SERVICES AVAILABLE

We have attached for your reference our standard scope of engineering services. In addition to our Basic Building Engineering services, we have the ability to provide Additional or Specialist Services in various areas, if necessary, in the course of the project. Some of the services, which may prove to be relevant to this project, are:

- Architectural Lighting Design: As part of Basic Services, OAPCAL will provide general lighting design as defined in the attached scope of work, and site lighting as an additional service described previously.
- Acoustics, including architectural and environmental noise issues and noise control. Please see our proposal submitted under separate cover.
- Telecommunications systems, including voice, data, paging, intercom, public address, central clocks, elapsed timers, etc. Our basic fee includes only providing electrical power to the equipment. Conduit layouts, sizing, and all associated infrastructure for these systems will be the responsibility of the Owner. When the extent of any telecommunications infrastructure to be provided in our work is clarified, we will provide an additional services proposal.
- Audio Visual systems, including audiovisual for meeting rooms, exhibits, retail floor, etc. Our basic fee includes only providing electrical power to the equipment. Conduit layouts, sizing, and all associated infrastructure for these systems will be the responsibility of the Owner.
- Security Systems, including CCTV, door alarms, and card key access system. Our basic fee includes only providing electrical power to the equipment. Conduit layouts, sizing, and all associated infrastructure for these systems will be the responsibility of the Owner.
- Life Cycle Costing Analysis, Early in the design process life cycle cost for tradeoffs of alternative building systems can be analyzed and explored to arrive at the most appropriate and cost effective solution. Life cycle costing of systems is an integral and important element of the process of energy efficient design. Upon request, we would be happy to provide a proposal.
- Computerized Daylighting Studies
- Computational Fluid Dynamics Study, the use of CFD analysis can be used as a means to understand air flows within a space by modeling the space in 2- or 3-D. This has been proven to save clients on capital cost and energy consumption. Upon request we would be happy to provide a proposal.
- Non-linear and / or Performance Based Seismic Design of Structural Systems
- Dynamic Analysis of Structural Systems, where not required by Code.
- Sustainable Design Consulting Services—Our basic services does not include the detailed Energy Analyses required for LEED certification, advice on Integrated Envelope Design and LEED rating specifications not specifically related to the mechanical, electrical or plumbing systems. These elements can be provided as an additional service.
- Façade Engineering
- Special Materials—Incorporation of special materials as part of the structural system, which are not recognized by the Building Code.

Additional services will be carried out on either a negotiated lump sum or time and materials basis. Our current time and materials rates are as follows. Hourly rates are reviewed annually in April.

SCHEDULE OF HOURLY TIME BASIS RATES

Principal	\$	225.00
Senior Associate/ Project Manager	\$	155.00
Associate	\$	135.00
Senior Engineer	\$	110.00
Engineer	\$	95.00
Sr. Draftsperson	\$	90.00
Designer / Draftsperson	\$	80.00
Clerical I	\$	50.00

OUTLINE OF EXCLUDED SCOPE

The basic scope of our services, and therefore the engineering fees as outlined in the proposal, DOES NOT include the following items:

- Cost estimating. However, as part of Basic Services, OAPCAL will provide review and comment to cost analysis completed by others as part of this scope of work.
- Smoke exhaust calculations. However, as part of Basic Services, OAPCAL will design smoke control systems based upon airflow calculations, smoke exhaust and pressurization requirements and concepts provided by a specialty Fire and Life Safety Code Consultant.
- Preparation of Record Drawings from the Contractor's As-Built drawings. However, as part of Basic Services, OAPCAL will review the as-built drawings by the Contractor for completeness.
- Building commissioning. However, as part of Basic Services, OAPCAL will review testing and balancing reports, as-built drawings, owner's manuals and final field observation report during the construction administration phase. Witnessing and directing the actual testing and balancing of the mechanical and electrical systems and / or full commissioning of the building services is excluded from our scope of work.
- Preparation of demolition drawings / site surveys / building services surveys, utilizing non-invasive activities, including building a set of CAD drawings is excluded from our scope of work.
- Wind tunnel testing and evaluation.

REIMBURSABLE EXPENSES

Reimbursable expenses include the following items, all of these expenses will be reimbursed at 1.1 times cost. We suggest that you allow for \$20,000.00 (twenty thousand dollars) for reimbursable expenses related to this project.

- Travel and accommodations outside of Los Angeles County.
- All costs associated with printing and plotting of formal submissions to the Owner, other consultants, and the Contractor.
- Courier and long distance telephone charges.
- Additional CADD drawings requested by the Owner other than that required in the final submittal for each phase of the project as detailed in the attached Scope of Engineering Services.
- If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

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- Expense of renderings, models and mock-ups requested by the Owner.

We have a team of experienced engineers looking forward to the chance to work on this project. We would be pleased to have the opportunity to meet with you to discuss this proposal in detail. If you need any further information, please do not hesitate to call our proposed Project Manager, Catherine Wells or me.

Yours sincerely,
for Ove Arup & Partners California Ltd.

Atila Zekioglu
Principal

Enc Scope of Engineering Services

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QAD Ortega Hill, Phase I
Scope of Engineering Consulting Services
March 29, 2002

ARUP

STRUCTURAL ENGINEERING SERVICES AND DELIVERABLES**Introduction**

The basic structural design services of Ove Arup & Partners California Ltd. (OAPCAL) include designing building structural systems and all other major components of the buildings requiring support limited to within five feet (5'-0") of any building envelope. All free standing structures

including but not limited to retaining walls, property line walls / fences, trash enclosure walls, stairs, flagpoles, planter and landscaping walls, equipment enclosures, pavement sections, shall be done by a registered Civil Engineer retained by others, and are not included as part of this scope. We will design bases for light poles at the building exterior.

1.0 Design Development

Based on the previously approved schematic design scheme, OAPCAL will prepare design drawings and other documents as required to describe the structural systems, materials, and design intent as delineated by the Architect and other such elements, as may be appropriate.

- 1.1 OAPCAL will review the existing geotechnical report for structural concerns and conformance with new codes, and respond in writing.
- 1.2 OAPCAL will re-analyze the building lateral systems and prepare CADD plans of the revised structural system in conformance with the 1997 Uniform Building Code and current architectural layouts, showing foundations, framing and preliminary design of special conditions and systems including materials, gross sizes, critical details, coordination clearances and basic dimensions.
- 1.3 OAPCAL will participate in cost analysis and cooperate with the *construction manager* in the preparation of detailed estimates, including alternate materials and systems.
- 1.4 OAPCAL will coordinate its work with that of other consultants.
- 1.5 OAPCAL will coordinate the Design Development drawings with the revised drawings prepared by other consultants and prepare a list of any and all design concerns and considerations related to structural engineering.
- 1.6 OAPCAL will attend two(2) design coordination meeting with the Design Team in Santa Barbara County.

2.0 Construction Documents

Based on the approved design development scheme, OAPCAL will prepare construction documents.

- 2.1 Construction documentation shall include preparation of documents necessary to fully and completely convey the design, which shall be used for bidding and construction. Documents shall include detailing of structural connections.
- 2.2 OAPCAL will indicate non-structural items that affect the basic structure or provide appropriate cross-references to drawings by others for such items. Special attention will be required relative to the exterior façade. We will account for design loads (wind, gravity, etc.) imposed onto the building structural system, as a result of the exterior façades. However, the façade component design and detailed façade attachments are not included in OAPCAL's building engineering scope of work.

- 2.3 OAPCAL will provide necessary criteria and other information needed for the design and installation of pre-engineered elements.
- 2.4 OAPCAL will indicate on the drawings design criteria such as live and superimposed dead loads, material strengths, code requirements and any provisions for future additions.
- 2.5 OAPCAL will coordinate as required with the Architect and other consultants relative to structural impacts to their work.
- 2.6 OAPCAL will produce, as required by jurisdictional authorities, structural calculations in order to facilitate review of the documents for permit. Drawings and calculations shall be "signed and sealed" as required by the building official in order to obtain a building permit.
- 2.7 The design and documentation of non-primary and non-load bearing structural components as required by the Architect and other consultants in order to facilitate other components of the project, including ceiling and interior partitions, are not part of OAPCAL's scope.
- 2.8 OAPCAL will assist the Architect in specifying the scope, standards and frequency of required testing and inspection services by independent agencies.
- 2.9 OAPCAL will revise drawings as required by reviewing code authorities and assist the Architect to obtain all City, County, State or other governmental approvals prior to bid.
- 2.10 OAPCAL will attend three (3) coordination meetings with the Design Team in Santa Barbara County.
- 2.11 OAPCAL will prepare final specifications utilizing our master specification system based on the CSI format to include the Architect's typeface and page layout.

3.0 Bidding and Negotiations

- 3.1 OAPCAL will be responsible for coordination and incorporating all addenda into the Construction Documents package for issue to the Contractor "for construction."
- 3.2 OAPCAL will assist the Owner and the Architect during the Bid Phase by interpretation of the Bid Documents and coordination and preparation of Addenda.
- 3.3 OAPCAL will attend Pre-Bid and Pre-Construction meetings, answer Contractor questions and issue addenda.

4.0 Construction and Post Construction Administration

- 4.1 OAPCAL will visit the site at intervals, to become generally familiar with the progress and quality of the work and to see whether construction is proceeding in accordance with the Construction Documents. This will be one visit per month over the construction period of the superstructure. A written report of OAPCAL's findings shall be prepared at the conclusion of each site visit and be forwarded to the Owner and the Architect.
- 4.2 OAPCAL will resolve all "Requests for Information" pertaining to the structural design.
- 4.3 OAPCAL will advise and consult with the Owner, the Architect and other consultants during the Construction Administration phase.
- 4.4 OAPCAL will report to the Owner and the Architect in writing any work observed during site visits that does not conform to the Construction Documents.
- 4.5 OAPCAL will prepare revisions, modifications and construction bulletins as required.

- 4.6 OAPCAL will review or reject the Contractor's submittals (such as shop drawings, product data and samples), but only for conformance with the Construction Documents. Such action shall be taken with reasonable coordination and promptness and in no case longer than ten (10) working days from receipt, so as to cause no delay. If any Contractor submittal requires more than two reviews, the third review and any subsequent review will be an additional service.

5.0 Exclusions

- 5.1 Performance of cost analysis. However, OAPCAL will provide review and comment to cost analyses completed by others as part of this scope of work.
- 5.2 As part of Basic Services, OAPCAL will review the as-built drawings prepared by the Contractor for completeness. These as-built drawings will be the record drawings.
- 5.3 Non-public exit stairs and external stairs outside the building envelope.
- 5.4 Design of curtain wall / façade framing for heavier finishes such as full course brick veneer, GFRC, precast concrete or stone finishes.
- 5.5 Design and detailing for aluminum and steel glass storefront window wall systems.
- 5.6 Underpinning and / or shoring of existing and adjacent buildings and streets as may be required during construction. Shoring and / or excavation procedures and design packages of any sub-grade components.
- 5.7 Large billboards, signage and graphic elements, which are not an integral part of the building's structural system.
- 5.8 We have assumed that the project will be bid as one complete package for construction in one continuous phase, and as such, the documentation and effort to create separate foundation, steel, etc., bid packages is excluded.
- 5.9 Design, engineering and plan check approval of remedial solutions required to correct as-built conditions (Contractor errors) that significantly do not conform to the Construction Documents.

6.0 Scope Clarifications

- 6.1 Stair Design: As part of Basic Services, we have included the design of all concrete stairs within and directly adjacent to the building.
- 6.2 Ceilings: We will provide attachment points for heavy decorative plaster, metal or wood ceilings from the roof or floor structure above. Lightweight ceiling suspension systems will be a bidder-designed element, indicated on the architectural drawings.
- 6.3 Handrails: The design of handrails / guardrails is included for stairs that we design (see above), catwalks that we design, seating balconies, and lobbies. Handrails / guardrails for bidder-designed stairs will be a bidder-designed element.
- 6.4 We will assist the Architect to provide a design-build specification and conceptual details indicating the nature of exterior skin connections, *including metal studs*, and supports for exterior building maintenance equipment. We are assuming that for the purposes of this proposal that the façade is non-load bearing. Our experience has been that the curtain wall contractor's final methods of attachment to the building superstructure (including embedded items and architectural pre-cast concrete) differ, and the design-build contractor will provide the Owner with the most cost effective solution.

MECHANICAL / PLUMBING ENGINEERING SERVICES AND DELIVERABLES

Introduction

The basic mechanical and plumbing engineering services of OAPCAL include design of all mechanical, plumbing and energy management systems for the project, including water, sewer and natural gas systems to a point of connection five feet (5'-0") outside of the main building. Design of the fire hydrant system to a point of connection, as required, shall be done by a registered Civil Engineer. As part of its Basic Services, OAPCAL will develop a performance specification for the fire sprinkler system, fire riser location and main pipe distribution. Site drainage shall be

performed by a registered Civil Engineer.

Primary ductwork routes will be designed for vertical risers and main horizontal distribution to service a nominal number of VAV devices. This effort is necessary due to required coordination with architectural, structural and other trades for restricted floor to ceiling heights. *Coordination of sprinkler main and roof drain piping with structure and ceiling will be carried out.*

1.0 Design Development

- 1.1 OAPCAL will attend two (2) systems design / coordination meetings with the Design Team in Santa Barbara County.
- 1.2 OAPCAL will re-size mechanical units, provide weights, electrical loads and unit locations in building(s).
- 1.3 OAPCAL will determine main duct sizes and VAV device zoning.
- 1.4 OAPCAL will contact local authorities to determine requirements and develop code review for any special requirements.
- 1.5 OAPCAL will re-evaluate the building for compliance with the new Title 24 Energy Code requirements and revised building codes. OAPCAL will advise on architectural implications due to new code requirements.
- 1.6 OAPCAL will prepare Design Development drawings on electronic backgrounds of architectural plans.
- 1.7 OAPCAL will coordinate with other consultants.

2.0 Construction Documents

- 2.1 OAPCAL will attend three (3) coordination meetings with the Design Team in Santa Barbara County.
- 2.2 OAPCAL will coordinate work with other consultants.
- 2.3 OAPCAL will prepare final construction documents.
- 2.4 OAPCAL will revise drawings as required by reviewing code authorities. Assist the Architect to obtain all City, County, State or other governmental approvals prior to bid.
- 2.5 OAPCAL will attend final meeting with the Owner prior to review of final construction drawings.
- 2.6 OAPCAL will attend all backcheck meetings, as required, with government agencies to obtain approval of mechanical systems.
- 2.7 OAPCAL will prepare final specifications utilizing our master specification system based on the CSI format to include the Architect's typeface and page layout.

3.0 Bidding and Negotiations

- 3.1 OAPCAL will respond to the Architect with all clarifications of drawings.
- 3.2 OAPCAL will provide addenda as required to clarify drawings.
- 3.3 OAPCAL will assist with post-bid analysis of mechanical / plumbing engineering components.

4.0 Construction and Post Construction Administration

- 4.1 OAPCAL will provide one visit per month during the major installation of mechanical and plumbing systems and a final jobsite observation to prepare a mechanical/plumbing punch list.
- 4.2 OAPCAL will provide clarifications and revisions to drawings and / or specifications when required.
- 4.3 OAPCAL will review shop drawings and submittals. If any Contractor submittal requires more than two reviews, the third review and any subsequent review will be an additional service.

5.0 Exclusions

- 5.1 Specialist studies (i.e., life cycle costing, daylighting and natural ventilation)
- 5.2 Performance of cost analysis. However, OAPCAL will provide review and comment to cost analyses completed by others as part of this scope of work.
- 5.3 As part of Basic Services, OAPCAL will review the as-built drawings prepared by the Contractor for completeness. These as-built drawings will be the record drawings.
- 5.4 Kitchens, cafeteria, concessions and pantries will be provided with single utility connection points at agreed positions and floor drainage connection points at agreed positions. The kitchen or concession shall be designed by a specialist consultant who will provide all necessary information for furniture, mechanical and plumbing services and obtain all necessary permits; OAPCAL will coordinate utility connection

points only, as noted above.

- 5.5 Special mechanical systems and / or process systems.
- 5.6 Design, engineering and plan check approval of remedial solutions required to correct as-built conditions (Contractor errors) that significantly do not conform to the Construction Documents.
- 5.7 Acoustical consulting services related to the analysis and evaluation of on-site and off-site noise, including noise generated by mechanical equipment.
- 5.8 Design of infrastructure for a dedicated Data Center is included as part of this Scope of Work.

6.0 Scope Clarifications

- 6.1 OAPCAL will design smoke control systems based upon airflow calculations and concepts provided by a specialty Code Consultant retained by others.
- 6.2 OAPCAL will undertake a prescriptive Title 24 code check on the building at the Design Development Phase, and will make recommendations on any modifications that may be necessary in order to comply with Title 24 requirements. Once the modifications are made, OAPCAL will undertake a further prescriptive compliance check.

ELECTRICAL ENGINEERING SERVICES AND DELIVERABLES

Introduction

The basic electrical engineering services of OAPCAL include the basic design of building and site electrical systems as required for a core and shell design. This will include electrical service from the building to a point of connection supplied by the utility company, design of general power service to all HVAC and plumbing equipment. Additionally, this will include all required minimum emergency power, fire and smoke detection, emergency lighting and normal power systems for core and utility areas.

1.0 Design Development

- 1.1 OAPCAL will attend two (2) systems design / coordination meetings with the Design Team in Santa Barbara County.
- 1.2 OAPCAL will re-evaluate and re-define all major electrical systems.
- 1.3 OAPCAL will re-evaluate and incorporate any design/code changes and prepare Design Development drawings on electronic backgrounds of architectural plans.

2.0 Construction Documents

- 2.1 OAPCAL will attend three (3) coordination meetings with the Design Team in Santa Barbara County.
- 2.2 OAPCAL will coordinate work with other consultants.
- 2.3 OAPCAL will prepare final construction documents.
- 2.4 OAPCAL will revise drawings, as required by reviewing code authorities. Assist the Architect to obtain all City, County, State or other governmental approvals prior to bid.
- 2.5 OAPCAL will attend final meeting with the Owner prior to review of final construction drawings.
- 2.6 OAPCAL will attend all backcheck meetings, as required, with government agencies to obtain approval of electrical systems.
- 2.7 OAPCAL will prepare final specifications utilizing our master specification system based on the CSI format to include the Architect's typeface and page layout.

3.0 Bidding and Negotiations

- 3.1 OAPCAL will respond to Architect with all clarifications of drawings.
- 3.2 OAPCAL will provide addenda as required to clarify drawings.
- 3.3 OAPCAL will assist with post-bid analysis of electrical engineering components, if required.

4.0 Construction and Post Construction Administration

- 4.1 OAPCAL will provide one visit per month during major installation of electrical systems and a final jobsite observation to prepare an electrical punch list.
- 4.2 OAPCAL will provide clarifications and revisions to drawings and / or specifications when required.

- 4.3 OAPCAL will review shop drawings and submittals. If any Contractor submittal requires more than two reviews, the third review and any subsequent review will be an additional service.

5.0 Exclusions

The following work is excluded from the OAPCAL scope of work:

- 5.1 Tenant improvements and fit-outs of the occupied spaces. OAPCAL scope of work will be limited to minimal core and shell type of services.
- 5.2 Record drawings. However, as part of Basic Services, OAPCAL will review the as-built drawings by the Contractor for completeness. These as-built drawings will be the record drawings.
- 5.3 Kitchens, cafeteria, concessions and pantries will be provided with a single utility connection point at an agreed position. The kitchen or concession shall be designed by a specialist consultant who will provide all necessary information for equipment requiring electrical services and obtain all necessary permits; OAPCAL will coordinate the utility connection point only, as noted above.
- 5.4 Performance of cost analysis. However, OAPCAL will provide review and comment to cost analysis completed by others as part of this scope of work.
- 5.5 The design of the telephone, data, sound, audio-visual, security and other signal systems including device layouts, cable trays, conduit routings, system specifications, equipment layouts, and wiring will be provided by specialist consultants appointed by the Owner / Architect. Our basic fee includes only providing power supplies to the equipment, based on information provided by others.
- 5.6 Design, engineering and plan check approval of remedial solutions required to correct as-built conditions (Contractor errors) that significantly do not conform to the Construction Documents.
- 5.7 The shell and core scope of work includes space for a future computer room. We will provide power to this room, based on requirements from QAD. The telecommunications designer will provide requirements for underground telecommunication conduits to the room.

6.0 Scope Clarifications

- 6.1 As part of Basic Services, OAPCAL will provide basic building lighting design. This includes the development of appropriate lighting schemes for typical toilet rooms, utility rooms, main lobby, exit lighting at exterior doors and core spaces only. Our work will include the selection of light fixtures, providing catalog sheets, and assisting the Architect in generating reflected ceiling plans. Excluded from our scope of work are exhibit lighting, accent lighting and custom light fixtures. OAPCAL will provide Title 24 calculations as part of the mechanical calculations, with an allowance for interior lighting to be used in the tenant improvement fit-out design by others. If local jurisdiction requires independent calculations to be completed for individual spaces, this shall be an additional service and a separate proposal can be forwarded at that time.

QuickLinks

[STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSULTANT FOR THE QAD ORTEGA HILL PROJECT](#)

[FOOTHILL CAPITAL LETTERHEAD]

July 31, 2002

QAD Inc.
 6450 Via Real
 Carpinteria, California 93102
 Attn: Christopher L. Greco, Treasury Manager

Re: *Amendment to Loan and Security Agreement*

Dear Mr. Greco:

Reference is made to that certain Loan and Security Agreement, dated as of September 8, 2000, by and between Foothill Capital Corporation ("Lender") and QAD Inc. ("Borrower"), as amended (as so amended, the "Loan Agreement"). Capitalized terms, which are used herein but not defined herein, shall have the meanings ascribed to them in the Loan Agreement.

Borrower has requested Lender's consent for Borrower to incur certain obligations in connection with the development of certain real property, to sell other real property, and to re-set the covenants set forth in the following sections of the Loan Agreement:

- (i) *Section 7.20(a)(i)* (Minimum EBITDA);
- (ii) *Section 7.20(a)(ii)* (Tangible Net Worth); and
- (iii) *Section 7.20(b)(i)* (Capital Expenditures).

By their respective signatures below, Lender and Borrower hereby agree to the following:

1. Effective as of Borrower's compliance with the Conditions (as defined below), the Loan Agreement shall be amended as follows:

- (a) The following terms are added to *Section 1.1* of the Loan Agreement:

"*California Development Plan*" means Borrower's plan for development of the Ortega Hill Property.

"*Ortega Hill Property*" means Borrower's Real Property commonly known as 2111 Ortega Hill Road, Summerland, California 93067."

"*Mark Hill Property*" means Borrower's Real Property commonly known as 6390 Via Real Carpinteria, CA 93013.

- (b) The term "*Permitted Dispositions*" in *Section 1.1* of the Loan Agreement is deleted and replaced by the following:

"*Permitted Dispositions*" means (a) sales or other dispositions by Borrower of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of Borrower's business, (b) sales by Borrower of Inventory to buyers in the ordinary course of business, (c) the use or transfer of money or Cash Equivalents by Borrower in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents, (d) the licensing by Borrower, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of Borrower's business, (e) sale of the Real Property Collateral so long as there has not occurred any Event of Default which is continuing, and (f) the transfer to Caltrans of approximately one-quarter acre of the Ortega Hill Property, for use as a bike trail, as described in the California Development Plan."

- (c) *Section 7.20(a)(i)* of the Loan Agreement is deleted and replaced by the following:

Minimum EBITDA. EBITDA, measured on a fiscal quarter-end basis, of not less than the required amount set forth in the following table for the applicable period set forth opposite thereto:

Applicable Amount	Applicable Period
\$3,600,000	For the 12 month period ending July 31, 2002
\$1,900,000	For the 12 month period ending October 31, 2002
(\$2,300,000)	For the 12 month period ending January 31, 2003"

- (d) *Section 7.20(a)(ii)* of the Loan Agreement is deleted and replaced by the following:

"Tangible Net Worth. Tangible Net Worth of at least the required amount set forth in the following table as of the applicable date set forth opposite thereto:

Applicable Amount	Applicable Date
\$6,032,000	July 31, 2002
\$2,687,000	October 31, 2002
\$3,683,000	January 31, 2003"

(e) Section 7.20(b)(i) of the Loan Agreement is deleted and replaced by the following:

"(b) Make:

(i) *Capital Expenditures*. Capital expenditures in any fiscal year in excess of the amount set forth in the following table for the applicable period:

Applicable Amount	Applicable Period
\$14,000,000	Fiscal Year 2003
\$21,000,000	Fiscal Year 2004
\$7,000,000	Fiscal Year 2005"

(f) Borrower wishes to develop the Ortega Hill Property. In connection with the development of the Ortega Hill Property, Borrower plans to do all of the following, all in accordance with the California Development Plan, a copy of which has been delivered to Lender:

- (i) construction of two new buildings on the Ortega Hill Property;
- (ii) demolition of the west wing (approximately 8,000 square feet) of the existing building on the Ortega Hill Property, in order to clear the site for the two buildings described in clause (i) (the "Demolition"); and
- (iii) incur additional Indebtedness of no more than \$20,000,000.
- (iv) guarantee Indebtedness of no more than \$20,000,000.

Accordingly,

- (x) Lender consents to the Demolition; and

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(y) Schedule 5.20 is amended to add the debt described in clause (iii) above; and

(z) Schedule 7.6 is amended to add the guarantee described in clause (iv) above.

(g) Lender hereby consents to the sale of the Mark Hill Property Collateral, so long as:

- (i) Prior to and after giving effect to such sale, no Event of Default has occurred which is continuing; and
- (ii) Borrower causes 25% of the sales proceeds or \$500,000, whichever is less, from the sale of the Mark Hill Property to be delivered to Lender within two business days from the close of escrow.

Upon the delivery to Lender of the sums described in clause (ii), Lender shall deliver the original unrecorded Mortgage to Borrower. The sums described in clause (ii) shall be applied first to interest due on the Term Loan, with the remainder to the outstanding principal balance of the Term Loan (in the inverse order of the maturity of the installments due thereunder).

2. Lender is willing to enter into this letter amendment, provided that Borrower complies with the following conditions precedent (collectively, the "Conditions") no later than July 31, 2002, time being of the essence:

- (a) Borrower executes and delivers a copy of this letter agreement to Lender; and
- (b) Borrower pays Lender a non-refundable fee of \$35,000.

3. Subject to the satisfaction of the Conditions Lender hereby agrees to the amendments to the Loan Agreement provided herein; provided, however, that this letter agreement is not a waiver of the same provisions of the Loan Agreement in any other instance or of any Default of Event of Default. Lender is not obligated to provide this or any other consent.

4. This letter agreement constitutes an amendment to the Loan Agreement. Except as expressly set forth herein, the Loan Documents shall remain in full force and effect.

5. This letter may be executed in any number of counterparts which, when taken together, shall constitute but one agreement.

Please indicate your agreement to the foregoing by executing a copy of this letter in the space below.

Sincerely,

FOOTHILL CAPITAL CORPORATION

By /s/ JOHN NOCITA

John Nocita

Its Vice President

CONSENTED AND AGREED TO:

QAD INC.

By /s/ KATHLEEN M. FISHER

Kathleen M. Fisher

Its: Executive Vice President

Chief Financial Officer

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Exhibit 99.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of QAD Inc. (the "Company") on Form 10-Q for the period ending July 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Karl F. Lopker, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: September 13, 2002

/s/ KARL F. LOPKER

Karl F. Lopker
Chief Executive Officer
QAD Inc.

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

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Exhibit 99.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of QAD Inc. (the "Company") on Form 10-Q for the period ending July 31, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kathleen M. Fisher, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: September 13, 2002

/s/ KATHLEEN M. FISHER

Kathleen M. Fisher
Chief Financial Officer
QAD Inc.

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)