

Questys Solutions SUPPORT AGREEMENT

Client: County Of Monterey
 Address: 1590 Moffett Street
Salinas, CA 93905
 Date: _____

Purchase Order No. _____
 Purchase Order Date: _____
 Date Fiscal Year Begins: _____
 Sales Tax Percentage: 0

This Support Agreement (“Agreement”) is entered into by and between QSI 2011, Inc. d/b/a Questys Solutions (hereinafter referred to as “QSI”) and County Of Monterey (hereinafter referred to as “Client”). The parties hereto mutually agree that the provisions herein shall apply to the Plasmon AA32 storage hardware maintenance and support effective November 8, 2013 and continue for a thirty-six (36) month period. QSI may utilize a third-party vendor for the hardware maintenance and support but shall continue to be liable for the performance of all requirements of this Agreement.

NOW THEREFORE the Parties hereto agree as follows:

I. QSI will ensure the provision of support for the Plasmon AA32 w 2 UDO drives with 2 drive cache on a 9 x 5, next business day basis.

Program(s) and Services Description	Item	Qty	Fee	AMOUNT
1 Support for Plasmon AA32 w 2 UDO drives with 2 drive cache. Hours of on-site coverage (at product location) 8:00 am – 5:00 pm, M-F excluding ASTI holidays. Onsite response time: next business day. First year service period: 11/8/2013 to 8/31/2014 Fee for first year service period due: 12/8/13		1	\$ 3,079.12	\$3,079.12
1 Support for Plasmon AA32 w 2 UDO drives with 2 drive cache. Hours of on-site coverage (at product location) 8:00 am – 5:00 pm, M-F excluding ASTI holidays. Onsite response time: next business day. Second year service period: 9/1/2014 to 8/31/2015 Fee for second year service period due: 9/30/14		1	\$ 3,694.95	\$3,694.95
1 Support for Plasmon AA32 w 2 UDO drives with 2 drive cache. Hours of on-site coverage (at product location) 8:00 am – 5:00 pm, M-F excluding ASTI holidays. Onsite response time: next business day. Third year service period: 9/1/2015 to 8/31/2016 Fee for third year service period due: 9/30/15		1	\$ 3,694.95	\$3,694.95

- Client has option to renew for two (2) one-year periods at the same annual rate listed above.
- All other terms and conditions of the Support Agreement shall remain in full force and effect.

II. Description of ASTI’s Service Direct On-Site Maintenance:

- A. ASTI will provide Client with telephone technical support related to repair and preventative maintenance for the product(s) listed in Section I., above via ASTI's toll free phone line during the hours of coverage for the service plan selected above.
- B. ASTI will provide one (1) onsite preventive maintenance service call per annual service period, which includes inspection of moving parts, springs, screws, and any repair, replacements, adjustments and/or application of lubricants. Preventative maintenance will be scheduled by mutual agreement during the service plan hours.
- C. Once onsite service is determined appropriate by an ASTI Technical Support Representative, ASTI will provide onsite parts and labor.
- D. During the service plan hours of coverage, ASTI will provide a one (1) hour response time for engineering callback. Onsite response time varies according to the service plan.
- E. ASTI will reasonably aid in coordinating and communicating with Client's third party software vendors.
- F. ASTI will provide all product update information.
- G. Client will have access to ASTI's technical support web page and other support tools.
- H. If ASTI software is included as part of the product(s) (such as in the case of ASTI's Archive Appliance product), software support will also be included under the Service Direct plan, according to the same response times and days/hours of coverage as designated in the service plan for the product(s). Software support provides third level support via remote access including analysis of system log files to diagnosis problems, and availability of software patches, bug fixes and software updates. Software support does not include first level support, installation services, on-site software support, analysis related to non-ASTI equipment, interfacing support for non-ASTI equipment, or software upgrades that include enhanced or additional features (such upgrades may be made available at an additional charge).

III. Description of ASTI's Service Direct Depot Repair and Advanced Replacement Maintenance:

- A. ASTI will provide repair services at ASTI's depot for defective parts returned to ASTI by Client.
- B. For depot repair, if a part returned by Client is determined by ASTI to be No Trouble Found (NTF), it will be returned to Client at Client's expense, and QSI shall invoice Client for the NTF fee of \$250.00.
- C. For advanced replacement, ASTI will ship a new or remanufactured part to Client before receipt of Client's defective part. If ASTI does not receive Client's defective part within fifteen (15) days of the initial service call, Client shall be invoiced for the part at ASTI's then current list price. Advanced replacements will not be made until ASTI has received payment for the service period.
- D. For advanced replacement, if a part returned by Client is determined by ASTI to be non-repairable, Client will be invoiced for the advanced replacement part at ASTI's then current list price.
- E. For both depot repair and advanced replacement, all taxes (if applicable) and transportation charges, including freight, insurance, customs and duties shall be paid by the Client. Client shall provide shipping instructions and billing methods to QSI with its purchase order for service.

IV. Terms and Conditions for ASTI's Service Direct Maintenance:

- A. All maintenance services are proposed and performed strictly in accordance with this proposal and ASTI's Standard Service Direct Terms and Conditions, posted at www.astiusa.com/service_terms.pdf.
- B. Service Direct maintenance will be activated as of the start date stated in Section I., above (subject to the determination of eligibility by QSI at Client's expense if the product(s) had a lapse in coverage under an ASTI Service Direct contract) and receipt of Client's purchase order, or other written order method accepted by QSI. Additional fees may apply for the reinstatement of software support after a lapse in ASTI coverage.
- C. The total price of the service period is invoiced and/or due annually in advance of the service period. Payment terms will be one of the following: (i) net thirty (30) days from the date of QSI's invoice with approved credit; (ii) cash in advance; or (iii) payment in advance with a credit card. Remittance must include reference to the invoice number. A \$30 fee will be added to all account balances for each returned check. A late charge of 1.5% per month will be added to any amount not paid within the terms of the invoice. All bank charges, including without limitation wire transfer fees, incurred to facilitate Client's payment to QSI shall be Client's expense.
- D. During the term of the initial service period and any renewal thereof, and for one year after the final renewal term, Client agrees not to employ or offer employment to any ASTI service representatives or subcontractors.

V. Expiration and Automatic Renewal:

This proposal shall be for the initial service period, beginning on the effective date stated in Section I., and continuing in effect for the service period specified. At least sixty (60) days prior to the expiration of the service period, QSI will notify Client of the expiration date, and provide an updated proposal for the renewal term. ~~If Client does not cancel the contract by providing written notice to QSI at least thirty (30) days prior to the expiration date of the service period, this contract will automatically renew under the terms and conditions stated in QSI's updated proposal.~~

VI. Rate Changes:

The prices specified in Section I., above will not change during the initial service period stated in Section I. All rates are adjustable after the expiration of the initial service period. Rates for a Client on a month-to-month contract will be adjusted to the then-current monthly rates. Rate changes will not exceed a 10% increase per year.

VII. Cancellation:



A. In the event any invoice remains unpaid for a period of forty-five (45) days after the date of the invoice, QSI may, at its option, place Client's account on service hold or terminate the agreement resulting from this proposal, effective immediately without incurring any liability upon such termination. In that event, the Client shall be obligated to immediately pay QSI the balance of the unpaid invoice and the sum of three (3) months of monthly service charges or the balance due for the remainder of the service period, whichever is less.

B. The prices listed in Section I., above for each service plan are based on the assumption that Client will retain each service plan for the full term of the service period. Client acknowledges that the privilege of premature cancellation, with thirty (30) days written notice, is a special concession and that upon the exercise of such privilege an early termination charge will apply. The early termination charge will be the sum of three (3) months of monthly service charges or the balance due for the remainder of the service period, whichever is less.

Service Direct Maintenance Terms and Conditions

The terms and conditions contained herein apply to all proposals offered by QSI, the resulting contract for Service Direct maintenance, and any associated purchase order issued to QSI for Service Direct maintenance services ("Agreement") to be provided by Alliance Storage Technologies, Inc.. QSI's failure to object to provisions contained in any communication or document from Client shall not be deemed a waiver of any provisions herein or acceptance of Client's provisions. This document and any proposal provided by QSI constitutes the entire agreement between QSI and Client with respect to the subject matter hereof and it supersedes all other understandings, whether written or oral, and may be modified only in writing signed by both parties. Client's purchase order terms and conditions shall not apply and are superseded by this Agreement, even if Client's purchase order contains a statement that Client's terms and conditions prevail.

I. Service Period, Pricing and Payment

- A. Service periods are typically twelve (12) months. The dates of the service period shall be as stated by QSI in its written proposal.
- B. Pricing shall be as stated by QSI in its written proposal. Prices do not include taxes. Client agrees to pay or reimburse QSI for all applicable taxes arising out of or in connection with the performance of maintenance services, except for taxes based on QSI's net income. If applicable, Client shall provide tax-exempt documentation to QSI prior to the beginning of the service period. QSI reserves the right to adjust pricing during the service period if product attachments or features are changed during the service period.
- C. Payment terms are either (i) annually in advance; (ii) net thirty (30) days from the date of QSI's invoice with approved credit; (iii) cash in advance; or (iv) payment in advance with a credit card.

II. Product Eligibility and Exclusions

- A. For a previously installed product(s) to be eligible for maintenance service, the product(s) must be fully operational and updated to the latest mandatory revision level. As a condition of acceptance, if there has been a lapse in maintenance coverage, QSI requires a review of product logs and/or an onsite inspection of the product(s) at Client's expense. If the product(s) is discovered to be defective or not fully operational during such inspection, the defect must be fully corrected at Client's expense before the product(s) can be accepted for QSI maintenance service. QSI is available to correct such defects under QSI's then current time and material rates.
- B. Coverage under QSI's Service Direct Maintenance contract does not apply when: (i) installation, relocation, service or repairs are performed by non-QSI personnel or personnel that is not authorized by QSI; (ii) unauthorized parts are utilized; (iii) the product(s) is incorporated into a system which causes or involves any changes in the physical, mechanical or electrical

arrangement of the product(s); (iv) the product(s) are affected by alterations, modifications, neglect, accident, fraud, unusual physical or electrical stress, tampering or misuse, improper maintenance (including lack of proper cleaning), unsuitable operating or physical conditions, or removal or alteration of the product serial number tag, or improper packaging or handling, or any other use not in accordance with the applicable product documentation; (v) there are unforeseeable accidents, accidental sudden failure of computer systems (including any type of computer or system virus), acts of war or terrorism, or any natural disaster and/or act of God that negatively impact the product(s); or (vi) Client refuses to incorporate mandatory revisions issued by the manufacturer or to schedule preventative maintenance calls during the coverage hours. Items outside of the QSI manufactured product(s), such as but not limited to external SCSI cables, host adapters, servers, fiber bridges, routers, and third party hardware or software, are not covered the QSI warranty.

- C. If service, parts or product repair/replacement, is required to remedy any of the exclusions above, QSI is available to perform such services or provide such parts or product repair/replacement at QSI's then current time and material rates.
- D. QSI shall have the right, at any time during the term of this Agreement, to determine that a product has reached the end of its useful life, or can not be supported for other reasons, and is thus unserviceable. Such determination shall apply to all QSI Clients, not just to a single piece of equipment at Client's site. If Client desires repairs or a preventive maintenance service after the product's end-of-life, QSI will provide such service (if possible) at QSI's then current time and material rates. If QSI designates a product as end-of-life during an annual service period, QSI shall refund the pro-rata amount of the annual cost.
- E. QSI Service Direct maintenance may not be available in some locations. QSI will alert Client prior to beginning the service plan if service is not available in the requested location.

III. Client Responsibilities

- A. Prior to the provision of maintenance, Client is **solely** responsible for conducting a complete backup of all data/files/software. Client shall be **solely** responsible for the security of Client's data, files, operating system/application software and media required to reconstruct files, data, programs, and software. Client shall be **solely** responsible for necessary data recovery planning and execution.
- B. Client shall provide QSI sufficient access to the Equipment, whether via remote connection or on-site. Client must provide remote access for software support.
- C. Client is responsible for providing authorized personnel to shut down/restart any attached software or servers as needed before/after QSI performs the maintenance.



- D. Client is responsible for all cabling and routing of cables, including without limitation power, network, SCSI UPS communications and serial cables.
- E. Client shall ensure that space and environmental conditions comply with the specifications set forth in the user manual.
- F. Client shall be responsible for returning parts following on-site maintenance and/or at the end of the service period per QSI instructions.
- G. Any material failure of Client to satisfy the above responsibilities that result in additional QSI standby time and/or additional services by QSI beyond the scope of QSI's proposal for Service Direct will result in additional charges.

IV. Warranty and Limitation of Liability

- A. QSI's sole obligation shall be to provide maintenance services in a professional and workmanlike manner in order to maintain or restore the performance of the product(s) according to QSI specifications.
- B. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES CONTAINED HEREIN ARE FOR THE SOLE BENEFIT OF CLIENT AND ARE NOT FOR ANY THIRD PARTY.
- C. QSI DOES NOT REPRESENT THAT THE USE OF THE PRODUCTS OR SOFTWARE SHALL BE FREE OF ALL ERRORS OR INTERRUPTIONS. IN NO EVENT SHALL QSI BE LIABLE FOR ANY LOSS OF DATA, LOSS OF REVENUE, OR LOSS OF USE OF THE PRODUCTS, OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE SERVICES OR PARTS PROVIDED BY QSI. UNDER NO CIRCUMSTANCES WILL QSI'S LIABILITY EXCEED THE AMOUNT PAID BY CLIENT TO QSI WITH RESPECT TO THE SERVICE PERIOD DURING WHICH THE EVENT OCCURRED GIVING RISE TO THE CLAIM.

V. Hold Harmless, Insurance and Confidentiality

- A. The Parties agree to hold each other harmless, including its employees, officers, directors and agents from and against all claims, damage, loss or injury resulting from any act or omission of either party.
- B. QSI shall at its sole cost and expense, procure and maintain in full force and effect the following minimum insurance coverage: General Liability for \$2,000,000 General Aggregate/ \$1,000,000 Each Occurrence; Workers' Compensation within Statutory Limits. Upon written request from Client, QSI shall provide a certificate of insurance evidencing the aforementioned coverage.
- C. Each party acknowledges that it (the "Receiving Party"), and its agents, employees and subcontractors may, in the course of performance of the maintenance service, have access to certain Confidential Information of or in the custody of the other party ("Disclosing Party"). Each party agrees, and shall cause its agents, employees and subcontractors to agree, not to improperly use or disclose such Confidential Information to any third party during the initial service period, any renewal service periods, and for a period of three (3) years after the final renewal period. "Confidential Information" shall not include information which (i) is not clearly marked as confidential; (ii) is or falls into the public domain through no fault of the Receiving Party; (iii) is approved for release by the Disclosing Party; (iv) was in the possession of, or is independently developed by, or is received from an authorized source by, the Receiving Party without a limitation of confidentiality, or (v) is ordered to be produced by a court of competent jurisdiction or an appropriate regulatory body, provided that the Receiving

Party notifies the Disclosing Party of such order and cooperates in any reasonable effort to assert a confidential or protected status for such information.

VI. General Provisions

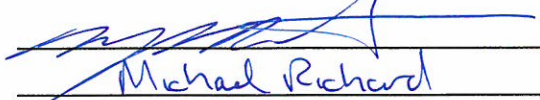
- A. The provisions of this Agreement shall be governed by the laws of the State of Colorado without giving effect to principles of conflicts of law. The parties shall settle any controversy arising out of or in connection with the services through binding arbitration in Colorado Springs, Colorado, in accordance with the commercial rules of the American Arbitration Association. Both parties waive their right to a jury trial.
- B. If any of these terms and conditions are declared to be invalid, illegal or unenforceable, they shall be deemed omitted. The parties shall promptly negotiate an acceptable substitute provision.
- C. The waiver or failure of either party to exercise any right provided herein shall not be deemed a waiver of that right or any other right.
- D. Client may not assign its benefits or its obligations associated with this Agreement without the prior written consent of QSI; except that Client may freely assign to a third party successor acquiring all or substantially all of its business assets. QSI may assign this Agreement without the consent of Client. Client acknowledges and agrees that some or all of the onsite maintenance service may be subcontracted by QSI to a QSI of QSI's choice; however, QSI shall retain sole responsibility for performance obligations.
- E. The official language of this Agreement and all transactions conducted under this Agreement is USA English.
- F. Notwithstanding the general rules of construction, both parties acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.
- G. This Agreement may be terminated by either party immediately with written notice upon (i) the institution by or against either party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts; (ii) an assignment for the benefit of creditors by either party; or (iii) the dissolution of either party. In the case of QSI's insolvency, Client shall receive a pro-rata refund of the service fee if Client has not received any repair service during the term. In the case of Client's insolvency, QSI shall retain the full service fee for the current service period.
- H. Neither party shall be in default of any obligations under this Agreement if such default is not within the reasonable control of the party affected, including but not limited to default which results from governmental acts or directives, strikes, acts of God, acts of terrorism, war, insurrection, riot or civil commotion, fires, flooding, explosions, embargoes or delays in manufacturers or vendors furnishing supplies or products (only to the extent that delay vendors is caused by its own event of force majeure).
- I. The relationship of QSI and Client established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other or (ii) constitute the parties as partners, joint ventures, agents, co-owners or otherwise as participants in a joint or common undertaking or (iii) empower or authorize either party in any capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.
- J. Any clauses in the Agreement, that by their sense and context should survive the expiration or termination of this Agreement, shall survive expiration or termination of this Agreement.



Executed by Client:

Signature: _____
Name: _____
Title: _____
Date: _____

Executed by: QSI 2011, Inc. dba Questys Solutions

Signature: 
Name: Michael Richard
Title: CFO
Date: 12-4-13

Address: 2302 Martin, Suite 475
Irvine, CA 92612