

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-2543

**Agreement**

This Products and Services Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, ("Effective Date") by and between **GENERAL DATATECH, L.P.** ("General Datatech"), with offices at **999 Metromedia Place, Dallas, Texas 75247** and \_\_\_\_\_ ("Customer"), with offices at \_\_\_\_\_.

In exchange for payment by Customer of the charges and any applicable taxes arising under this Agreement, General Datatech agrees to provide technical services ("Services"), software ("Software") and hardware ("Hardware") to Customer as more fully set forth in any Statement of Work ("SOW"), Purchase Order ("PO") or other agreement executed by and between the parties on or after the Effective Date. Any such SOW, PO or other agreement including any revised versions thereof shall be made part of this Agreement as though fully set forth herein.

This Agreement consists of this signature page and the following sections that are incorporated in this Agreement by this reference:

- 1. DIR Contract No. DIR-TSO-2543
- 2. General Datatech Responsibilities
- 3. Customer Responsibilities
- 4. Limitation of Liability
- 5. General Terms

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this Agreement to be duly executed.

**GENERAL DATATECH, L.P.**

**(INSERT ENTITY NAME HERE)**

By: Gendata, L.L.C., General Partner  
 By: \_\_\_\_\_  
 Name: John Woodard Roberts, III  
 Title: President  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

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### 1. General Datatech Responsibilities:

- 1.1. **Services** – General Datatech will perform the Services described in this Agreement and any incorporated SOW, PO or other agreement hereafter executed by the parties pursuant to this Agreement; Services may include technical services as well as support services for Hardware and Software to be provided as reflected in Section 1.2 below.
- 1.2. **Hardware and Software** – General Datatech will sell to Customer Hardware and Software described in this Agreement and/or any incorporated SOW, PO or other agreement hereafter executed by the parties pursuant to this Agreement. The specific Hardware or Software to be provided as well as the terms and conditions under which such sales shall be accomplished will be more fully set forth in SOW's, POs or other agreements executed by and between the parties. If any conflict is found between this Agreement and DIR Contract No. DIR-TSO-2543, The DIR contract prevails.
- 1.3. **Assignment of Rights and Interests:**  
Intellectual Property will be handled in accordance to Appendix A, Section 5 of DIR Contract DIR-TSO-2543.
- 1.4. **Invoicing** – General Datatech shall invoice Customer monthly for Services rendered, and for any Software or Hardware sold to Customer at the time of any such sales pursuant to applicable SOW's, PO's or other agreements unless expressly specified otherwise in an associated agreement by and between the parties and in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-2543. Each invoice will indicate the nature of the Services provided and/or the identity and quantity of any specific Hardware or Software sold to Customer, as well as the agreement (SOW, PO or other agreement) under which the Services were performed or the Hardware or Software was provided. In addition, General Datatech will invoice Customer for all other direct, non-labor charges, if any, incurred by General Datatech. Such charges may include, by illustration, pre-approved travel, lodging, automobile rental, meals and incidentals, computer time, telephone charges (remote connection to Customer's computer), copy charges, publications (printing, graphics), purchased software, shipping charges, and miscellaneous materials required for GDT to perform its obligations under this Agreement. Any pre-approved travel will be handled in accordance to the Texas Travel Management Program administered by the Comptroller of Public Accounts.
- 1.5. **Warranty, Disclaimer and Exclusive Remedy**
  - 1.5.1. General Datatech warrants that qualified personnel will perform the Services and that the Services will be of the kind and quality described in the Agreement.
  - 1.5.2. With regard to any products (Hardware or Software) manufactured by a third party and purchased by Customer from General Datatech pursuant to this Agreement and any associated agreement including but not limited to any incorporated SOW, PO, or other agreement or proposal associated with this Agreement, General Datatech will provide a copy of the equipment warranty and/or end user Software license agreement issued or provided by the manufacturer of said product upon request by the Customer. **General Datatech makes no independent warranty with respect to any such products or software (Hardware or Software) and provides no independent license with respect to any software (Software). Any third party products used will include written confirmation of Customer's right to use and if any terms conflict the DIR Contract No. DIR-TSO-2543 will prevail.**
  - 1.5.3. NEITHER GENERAL DATATECH NOR ITS SUPPLIERS EXTEND ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EITHER TO CUSTOMER OR TO THIRD PARTIES, FOR ANY PRODUCTS (HARDWARE OR SOFTWARE) PROVIDED TO CUSTOMER UNDER THIS AGREEMENT OR ANY ASSOCIATED OR INCORPORATED AGREEMENT, INCLUDING ANY SOW OR PO. NEITHER GENERAL DATATECH NOR ITS SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INTERRUPTION IN SERVICE OF ANY HARDWARE, SOFTWARE OR SYSTEM, OR FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM CUSTOMER'S USE OF (OR INABILITY TO USE) OR A THIRD PARTY'S UNAUTHORIZED USE OF SUCH PRODUCTS (HARDWARE OR SOFTWARE), EITHER SEPARATELY OR IN COMBINATION WITH OTHER EQUIPMENT, OR FOR COMMERCIAL LOSS OF ANY KIND, REGARDLESS OF WHETHER CUSTOMER OR ITS SUPPLIERS AND AGENTS HAVE BEEN ADVISED OF SUCH POSSIBILITY.
  - 1.5.4. IN ALL SITUATIONS INVOLVING PERFORMANCE OR NONPERFORMANCE BY GENERAL DATATECH UNDER THIS AGREEMENT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO (1) REQUIRE RE-PERFORMANCE OF THE SERVICES TO CUSTOMER'S REASONABLE SATISFACTION; (2) IN THE EVENT RE-PERFORMANCE IS NOT SATISFACTORY BY THIS STANDARD, CUSTOMER MAY TERMINATE THE APPLICABLE ORDER CLAIMED TO HAVE BEEN BREACHED BY WRITTEN NOTICE TO GENERAL DATATECH AND RETURN THE PRODUCT; AND, (3) IN THE EVENT RE-

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PERFORMANCE IS NOT SATISFACTORY AND AN ORDER IS TERMINATED, CUSTOMER MAY RECEIVE A REFUND OF ALL PAID FEES.

### 2. Customer Responsibilities:

- 2.1. **Payment** – Customer shall pay all undisputed amounts invoiced by General Datatech, regardless of the expiration or termination of this Agreement or any incorporated SOW, PO or other agreement or proposal associated with this Agreement in accordance to Appendix A, Section 8K of DIR Contract DIR-TSO-2543. These terms supersede any/all previous oral and/or written instructions or agreements, including Customer SOW's or PO's. Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-2543.
- 2.2. **Confidentiality** – In the course of performing their respective obligations under this Agreement, either party (the "Disclosing Party") may disclose to the other party (the "Receiving Party") certain information that the Disclosing Party regards as proprietary and confidential in nature, including but not limited to trade secrets; inventions; innovations; processes; records; business and product processes, methods and customer lists; accounts and procedures; software; products; and, consulting methodologies and specifications owned or licensed by the Disclosing Party and/or used by Disclosing Party in connection with the operation of its business (hereinafter "Proprietary Materials") that may or may not be licensed under separate agreements. The Receiving Party agrees to safeguard and keep confidential the Proprietary Materials, and to use such Proprietary Materials only internally in the course of the Receiving Party's business. The Receiving Party will limit the use of, and access to, the Proprietary Materials to the Receiving Party's employees whose use of, or access to, the Proprietary Materials is necessary for the Receiving Party's internal business use. The Receiving Party will have in effect, and will enforce, rules and policies designed to protect against unauthorized use or reproduction of the Proprietary Materials and other confidential information, including instruction of and written agreements with the Receiving Party's employees and contractors to insure that they use and protect the Proprietary Materials in a manner which protects the Disclosing Party's proprietary rights. To the extent allowable under the Texas Public Information Act, the Receiving Party shall not provide access to the Disclosing Party's Proprietary Materials to any third party unless such third party has signed a confidentiality agreement with the Disclosing Party. The Receiving Party shall have no obligation of confidentiality with respect to Proprietary Materials that: (i) were rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) were, or subsequently become, legally and publicly available without breach of this Agreement; (iii) are rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (iv) are developed by or for the Receiving Party without use of the Proprietary Materials and such independent development can be shown by documentary evidence; (v) become available to the Receiving Party by wholly lawful inspection or analysis of products offered for sale; (vi) are transmitted by a party after receiving written notification from the other party that it does not desire to receive any further Proprietary Materials; or (vii) are disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency, provided that the Receiving Party provides the Disclosing Party (a) prior written notice of such obligation and (b) the opportunity to oppose such disclosure or obtain a protective order.
- 2.3. **Cooperation** – Customer agrees that where participation by its own staff is necessary to General Datatech's provision of the Services or its other performance obligations under this Agreement, such staff shall possess the appropriate skills, experience and authority for the tasks assigned to them and shall be available at such times as are agreed by the parties. Customer agrees to designate a member of its staff who shall have the authority to represent Customer on all technical and staffing matters relating to the Services, Hardware or Software to be provided. Customer will allow General Datatech consultants, technicians and all other employees working under this Agreement all public holidays as recognized by Customer. If monthly rates are used, these monthly rates are inclusive of all public holidays recognized by Customer.

Customer will provide General Datatech with: a) a safe and suitable environment in which to perform its obligations under this Agreement, b) full and free use of data communications/telecommunication facilities as necessary to perform such obligations, and c) the right, under Customer's license or agreement with each third-party licensor of software utilized by Customer and relating to the Agreement, for General Datatech to perform its obligations with respect to such software.

- 2.4. **Taxes** – Taxes will be handled in accordance to Appendix A, Section 8F of DIR Contract No. DIR-TSO-2543.

### 3. Limitation of Liability & Indemnification:

Limitation of Liability and Indemnification will be handled in accordance to Appendix A, Section 10A and Section 10K of DIR Contract DIR-TSO-2543.

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### 4. General Terms:

- 4.1 This Agreement shall commence when fully executed by the parties hereto and shall remain in effect until terminated Appendix A, Section 11B of DIR Contract DIR-TSO-2543.
- 4.2. The following provisions shall survive the termination of this Agreement: Sections 1.1, 1.2, 1.3, 1.5, 2.1, 2.2, 2.4 and 4.5.
- 4.3. During the term of this Agreement and for 12 months thereafter neither party will solicit for employment any employee or contractor of the other whom was directly involved in the services performed hereunder. If during the term of this Agreement or for twelve months thereafter, Customer directly or indirectly retains the services (whether as an employee, independent contractor, or otherwise) of any employee of General Datatech who has provided services to Customer on behalf of General Datatech, Customer agrees that General Datatech will be damaged, but that the amount of this damage will be difficult to determine. This provision does not apply to publicly advertised solicitations.
- 4.4. In performing this Agreement, General Datatech is acting as an independent contractor and not as an employee or agent of Customer. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Each party agrees that it has no authority hereunder to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other party.
- 4.5. General Datatech staff performing the Services and/or selling Hardware or Software to Customer shall at all times remain under the direction and control of General Datatech. General Datatech reserves its rights to replace any General Datatech employee with another of like qualifications and experience upon Customer's agreement. Reasonable notice will be given when such replacement is required and General Datatech shall endeavor to maintain continuity of effort. For purposes of this Agreement, General Datatech shall be permitted to subcontract portions of its obligations under this Agreement including the Services to be performed under this Agreement to third parties upon Customer's agreement.
- 4.6. Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract DIR-TSO-2543.
- 4.7. This Agreement shall be construed in accordance with the internal laws of the State of Texas (irrespective of its choice of law principles). If any provision of DIR Contract No. DIR-TSO-2543 or this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as to best effect the intent of the parties hereto.
- 4.8. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment, indemnification, or breach of either party's intellectual property or confidentiality rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than four years after the cause of action has accrued.
- 4.9. Each party agrees to comply with all relevant laws and regulations of the United States and the country or territory in which the Services are provided, including but not limited to export laws ("Laws") to assure that neither any deliverable, if any, nor any direct product thereof is: a) exported, directly or indirectly, in violation of Laws, or b) intended to be used for any purposes prohibited by the Laws, including without limitation encryption technology, nuclear, chemical, or biological weapons proliferation.
- 4.10. Any dispute will be handled in accordance with Appendix A, Section 11A of DIR Contract No. DIR-TSO-2543.
- 4.11. DIR Contract No. DIR-TSO-2543 and this Agreement, and any incorporated SOW, PO or other proposal or agreement executed by and between the parties pursuant to this Agreement as well as General Datatech invoices arising thereunder, constitute the complete and exclusive statement of the parties' agreement about the Services to be performed and Hardware or Software to be provided under the Agreement(s), and supersede all prior communications relating to the subject matter of the Agreement(s). Additional or conflicting terms of any current or future Customer SOW, PO or other agreement are hereby rejected. DIR Contract No. DIR-TSO-2543 and this Agreement can be modified only in writing signed by an authorized signatory of each of the parties. The section titles contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Both General Datatech and Customer have read DIR Contract No. DIR-TSO-2543 and this Agreement, understand it, and accept its terms. The above signed each represent and warrant that he or she has authority to enter into and execute this Agreement on behalf of the party for whom he or she is signing.