



## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3826

### CGI TECHNOLOGIES AND SOLUTIONS INC. PROPRIETARY SOFTWARE MAINTENANCE AGREEMENT

This is a Proprietary Software Maintenance Agreement (“Agreement”) dated as of \_\_\_\_\_, 20\_\_, (the “Effective Date”) by and between \_\_\_\_\_ (“Customer”) a \_\_\_\_\_ corporation having a place of business at \_\_\_\_\_, and CGI Technologies and Solutions Inc. (“CGI”), a Delaware corporation having its principal place of business at 11325 Random Hills Road, Fairfax, Virginia 22030.

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#### 1. DEFINITIONS

Capitalized terms used in this Agreement will have the meanings given below or in the context in which the term is used, as the case may be.

- A. “Documentation” means the documentation provided by CGI for the Software pursuant to the License Agreement.
- B. “Enhancements” means changes or additions to the Software which CGI develops and makes available at no additional charge to all licensees of the Software who are under then-current maintenance agreements.
- C. “Software incident” means a material deviation of the Software from the specifications for the Software identified in the License Agreement.
- D. “License Agreement” means the license agreement specified in *Exhibit A* pursuant to which CGI licensed the Software to Customer.
- E. “Maintenance Period” means the initial term of this Agreement or any subsequent renewal period. The initial term and each renewal period is a separate Maintenance Period. The initial Maintenance Period is specified in *Exhibit A*. Each renewal Maintenance Period, if any, will be a period of twelve (12) months.
- F. “Software” means the software specified in *Exhibit A*.

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#### 2. PAYMENT TERMS

- A. Customer will pay, upon execution of this Agreement, the maintenance fees for the initial Maintenance Period set forth in *Exhibit A* in accordance with Appendix C of DIR Contract No. DIR-TSO-3826. CGI will provide Customer with written notice of and an invoice for the maintenance fees for each subsequent Maintenance Period at least thirty (30) calendar days prior to the expiration of the then-current Maintenance Period. CGI will not be obligated to provide maintenance services in any Maintenance Period (including the initial Maintenance Period) unless the maintenance fees for the Maintenance Period have been paid in full.
- B. All fees and expenses are to be paid to CGI in United States Dollars, by wire transfer of funds to an account designated by CGI or by check sent to Bank of America, c/o CGI Technologies and Solutions Inc. at 12907 Collections Center Drive, Chicago, IL 60693.
- C. Taxes will be handled in accordance to Appendix A, Section 4E of DIR Contract No. DIR-TSO-3826.

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#### 3. WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY

- A. CGI warrants that the maintenance services specified in *Exhibit A* will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such maintenance services. If Customer believes there has been a breach of this warranty and so notifies CGI in writing stating in reasonable detail the nature of the



claimed breach within thirty (30) calendar days after the maintenance services are delivered to Customer by CGI, then CGI will promptly investigate the matter. If it is determined that there has been a breach of this warranty, then CGI's sole obligation, and Customer's exclusive remedy, will be for CGI to correct or re-perform any affected maintenance services as necessary to cause them to comply with this warranty. There will be no additional charge to Customer for the investigation and correction efforts performed by CGI, except as provided in Section 2.B. If CGI is unable to correct a breach of this warranty after repeated efforts, Customer will be entitled to recover its actual damages subject to the limitations and exclusions set forth in Section 6.

- B. CGI warrants that the Software and Documentation do not, to CGI's knowledge, infringe any third party copyrights, patents or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America. Infringement shall be in accordance with Appendix A, Section 10A of the DIR Contract DIR-TSO-3826.
- C. CGI is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the Software or Documentation by anyone other than CGI and its subcontractors working at CGI's direction; or (ii) the combination, operation or use of the Software or Documentation with any items that CGI did not supply to Customer; or (iii) Customer's failure to use any new or corrected versions of the Software or Documentation made available by CGI; or (iv) CGI's adherence to Customer's specifications or instructions.
- D. CGI does not warrant that the Software will be error-free or that its operation will be uninterrupted. Customer acknowledges that it alone is responsible for the results obtained from use of the Software, including without limitation the completeness, accuracy and content of such results. Customer acknowledges further that it alone is responsible for independent verification and testing of any such results prior to using them in its business.
- E. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

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#### 4. NONDISCLOSURE

Customer and CGI agree that in connection with the performance of their respective obligations hereunder, each party may have access to the Confidential Information of the other party. The follow terms will apply to such access.

- A. **“Confidential Information”**. To the extent allowable under the Texas Public Information Act, “Confidential Information” means information belonging to or in the possession of a party which is confidential or a trade secret and is furnished or disclosed to the other party under the Contract Documents (including information exchanged in contemplation of entering into the Contract Documents): (i) in tangible form and marked or designated in writing in a manner to indicate it is confidential or a trade secret; or (ii) in intangible form and that either is of a nature that a reasonable person would understand to be confidential or a trade secret or is identified as confidential or a trade secret in a writing provided to the receiving party within thirty (30) business days after disclosure.
- B. **Exclusions**. “Confidential Information” does not include any information that, as evidenced by written documentation: (i) is already known to the receiving party without restrictions at the time of its disclosure by the furnishing party; (ii) after its disclosure by the furnishing party, is made known to the receiving party without restrictions by a third party having the right to do so; (iii) is or becomes publicly known without violation of the



Contract Documents; or (iv) is independently developed by the receiving party without reference to the furnishing party's Confidential Information.

- C. **Standard of Care.** Confidential Information will remain the property of the furnishing party, and the receiving party will not be deemed by virtue of the Contract Documents or any access to the furnishing party's Confidential Information to have acquired any right, title or interest in or to the Confidential Information. The receiving party agrees: (i) to afford the furnishing party's Confidential Information at least the same level of protection against unauthorized disclosure or use as the receiving party normally uses to protect its own information of a similar character, but in no event less than reasonable care; (ii) to limit disclosure of the furnishing party's Confidential Information to personnel furnished by the receiving party to perform Services under a Statement of Work or otherwise having a need to know the information for the purposes of the Contract Documents; (iii) not to disclose any such Confidential Information to any third party; (iv) to use the furnishing party's Confidential Information solely and exclusively in accordance with the terms of the Contract Documents in order to carry out its obligations and exercise its rights under the Contract Documents; and (v) to notify the furnishing party promptly of any unauthorized use or disclosure of the furnishing party's Confidential Information and cooperate with and assist the furnishing party in every reasonable way to stop or minimize such unauthorized use or disclosure.
- D. **Compelled Disclosure.** If the receiving party receives a subpoena or other valid administrative or judicial notice requesting the disclosure of the furnishing party's Confidential Information, the receiving party will promptly notify the furnishing party. Subject to its obligations stated in the preceding sentence, the receiving party may comply with any binding subpoena or other process to the extent required by law, but will in doing so make all commercially reasonable efforts to secure confidential treatment of any materials disclosed.
- E. **Return or Destruction.** Subject to record retention laws and policies, upon termination or expiration of this Agreement and all Statements of Work issued under this Agreement, the receiving party, at the furnishing party's option, will return or destroy all Confidential Information of the furnishing party that the receiving party does not possess under a valid license; provided that CGI may retain one (1) copy of all of its work products (including working papers) produced under the Contract Documents for archival purposes.

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## 5. LIMITATION OF LIABILITY

Limitation of Liability will be handled in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-3826.

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## 6. TERMINATION

Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3826.

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## 7. LAW AND DISPUTES

- A. Any claim, controversy or dispute arising under or related to the Agreement will be governed by the laws of Texas without regard to any provision of conflicting law that would require or permit the application of the substantive law of any other jurisdiction. Notwithstanding anything to the contrary, the parties expressly agree that the provisions of the Uniform Commercial Code (UCC) as enacted under state and federal law, and the Uniform Computer Information Transactions Act (UCITA) as set forth in any \_\_\_\_\_ or other statute of any state, or as may be amended or modified, applicable as of the effective



date of this Agreement or thereafter, shall not apply to this Agreement. Nothing herein shall be construed to waive the sovereign immunity of the state of Texas.

- B. Both CGI and Customer agree to comply fully with all relevant export laws and regulations of the United States to ensure that no information or technical data provided pursuant to this Agreement is exported or re-exported directly or indirectly in violation of law.
- C. Dispute Resolution will be handled in accordance to Appendix A, Section 11A of DIR Contract No. DIR-TSO-3826.
- E. No proceeding, regardless of form, arising out of or related to this Agreement may be brought by either party more than four (4) years after the accrual of the cause of action, except that (i) proceedings related to violation of a party's proprietary rights or any duty to protect Confidential Information may be brought at any time within the applicable statute of limitations, and (ii) proceedings for non-payment may be brought up to four (4) years after the date the last payment was due.

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## 8. GENERAL

- A. Notice will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3826.
- B. Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3826.
- C. Assignment will be handled in accordance to Appendix A, Section 4E of DIR Contract No. DIR-TSO-3826.
- D. DIR Contract No. DIR-TSO-3826 and this Agreement constitutes the entire agreement between the parties, and supersedes all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of this Agreement. This Agreement may be modified or amended solely in a writing signed by both parties.
- E. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.
- F. No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this Agreement.
- G. During the term of this Agreement and for twelve (12) months after its expiration or termination, neither party will, either directly or indirectly, solicit for employment or employ (except as permitted below) by itself (or any of its Affiliates) any employee of the other party (or any of its affiliates) who was involved in the performance of the party's obligations under this Agreement, unless the hiring party obtains the written consent of the other party. "Affiliate" means any other entity that directly or indirectly controls, or is under common control with, or is controlled by, the party. The foregoing provision will not (i) prohibit a general solicitation of employment in the ordinary course of business or prevent a party from employing any employee who contacts such party as a result of such a general solicitation; or (ii) be read so as to limit employment opportunities to an extent that would not be permitted under applicable law (e.g., California law).



H. The Exhibits referred to in and attached to this Agreement are made a part of it as if fully included in the text.

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Each party has caused its authorized representative to execute this Agreement as of the Effective Date.

CGI Technologies and Solutions Inc.  
(CGI)

By: \_\_\_\_\_

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

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

(Customer)

By: \_\_\_\_\_

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

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

TEMPLATE

**EXHIBIT A**

**CGI TECHNOLOGIES AND SOLUTIONS INC.  
Proprietary Software Maintenance Agreement**

1. **Maintenance Period.** The initial Maintenance period is the period beginning \_\_\_\_\_ and ending on \_\_\_\_\_.
2. **Maintenance Fee.** The maintenance fee for the initial Maintenance shall be \_\_\_\_\_.  
  
Customer may buy maintenance services for the Software for subsequent Maintenance Periods in which CGI is offering maintenance services, at CGI's then current prices or as negotiated between Customer and CGI. Maintenance for subsequent periods may not be purchased through this contract, DIR-TSO-3826.
3. **Software.** The maintenance services under this Agreement are provided with respect to the following Software:  
  
*{Insert Licensed Software after list is finalized in License Agreement}*
4. **License Agreement.** The Software was provided to Customer pursuant to the terms and conditions of that certain Proprietary Software License Agreement between CGI and Customer made effective as of [*Insert effective date of License Agreement*]. In the event CGI ceases to operate in the ordinary course of business, Customer will be granted a limited license to access and use the CGI Software source code solely for purposes of maintaining the Software, and consistent with the terms of the Proprietary Software License Agreement. Access and use of the CGI source code prior to this release event is prohibited.
5. **Maintenance Services.** CGI Standard Support and Maintenance Services provide the Customer with the required ongoing enhancements to the Software to address functional and technical changes. Specifically, the Standard Support and Maintenance Services provide these major components:  
  
[Insert specification of maintenance services.]

Agreed to and initialed for identification by:

\_\_\_\_\_  
(Customer)

\_\_\_\_\_  
(CGI)