



APPENDIX K TO DIR CONTRACT NO. DIR-TSO-3826
ONCUE360 SERVICES AGREEMENT

This is a Services Agreement (“Agreement”) dated as of _____ (the “Effective Date”) by and between the _____ (“Customer”), a _____, and CGI Technologies and Solutions Inc. (“CGI”), a Delaware corporation having its principal place of business at 11325 Random Hills Road, Fairfax, Virginia 22030. DIR Contract No. DIR-TSO-3826 and this Agreement provide the terms and conditions under which CGI may provide software development, transition, managed and hosting services, and other professional services to Customer for one or more projects.

1. DEFINITIONS

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

- A. “Affiliate” of a party means any other entity that directly or indirectly controls, or is under common control with, or is controlled by, the party. As used in this definition, “control” means actual or equitable ownership of a majority of the shares (or other securities, partnership interests or means of ownership, as the case may be) of an entity.
- B. “Change Order” means a written amendment to a Statement of Work that is prepared and signed by authorized representatives of both parties.
- C. “Contract Documents” mean this Agreement (including its attached Exhibits) and all Statements of Work issued under this Agreement, as well as any amendments or Change Orders to any of them.
- D. “Deliverables” mean any materials to be developed by CGI that are designated in a Statement of Work as being subject to a formal acceptance process upon delivery to Customer. Deliverables may be either Written Deliverables or Software Deliverables.
- E. “Managed Services” means those hosting and/or operational services performed under a Statement of Work which are recurring in nature and are the subject of the terms of Addendum A.
- F. “Services” mean the software development, transition, and other technical services provided by CGI pursuant to a Statement of Work.
- G. “Project Plan” means a document that states in detail the responsibilities of and tasks for each party under a particular Statement of Work. The Project Plan, at the time of creation, will be incorporated by reference and made part of the applicable Statement of Work. The Project Plan will be updated from time to time as mutually agreed by the parties, and will supersede all prior Project Plans for the applicable Statement of Work.
- H. “Services” means either Managed Services or Professional Services individually, or collectively, given the context in which it is used.
- I. “Software Deliverables” mean Deliverables that are operational software (a completed system or any module, subsystem or release).
- J. “Specifications” mean a mutually agreed upon document that describes with particularity the functions to be performed by a Software Deliverable and that is designated in the Statement of Work under which the Software Deliverable is being developed as the specifications for that Software Deliverable.
- K. “Statement of Work” means a document describing the Services that CGI agrees to perform for Customer and any specific terms and conditions for such Statement of Work.

Each Statement of Work will be substantially in the form attached as *Exhibit A* and signed by authorized representatives of both parties.

- L. “Written Deliverables” mean Deliverables that are documents, such as reports, system designs or documentation.

2. SCOPE OF WORK

- A. **Authorization to Perform Services.** Each separate project or CGI work assignment will be authorized by the execution of a Statement of Work. Each Statement of Work will constitute a separate contract between the signing parties incorporating the terms and conditions of DIR Contract No. DIR-TSO-3826 and this Agreement by reference. A Statement of Work may amend the terms and conditions of this Agreement as they apply to that particular Statement of Work, but only if the Statement of Work expressly identifies the section(s) that are being amended.
- B. **Affiliates.** An Affiliate of Customer may order Services from CGI and/or an Affiliate of CGI may agree to provide the Services for Customer under a Statement of Work. If an Affiliate of Customer executes a Statement of Work, then for the purposes of that Statement of Work the term “Customer” as used in this Agreement and the Statement of Work will be interpreted as a reference to Customer’s Affiliate, rather than to Customer itself. If an Affiliate of CGI executes a Statement of Work, then for the purposes of that Statement of Work the term “CGI” as used in this Agreement and the Statement of Work will be interpreted as a reference to the CGI Affiliate, rather than to CGI itself.
- C. **Statement of Work Managers.** Each Statement of Work will identify the “Statement of Work Manager” for each party, who will be authorized to give or obtain all information, decisions and approvals for that Statement of Work.

3. COMPENSATION

- A. **Services Fees.** The Statement of Work will state the method of payment for the Services. If no method of payment is stated in the Statement of Work, payment for the Services will be on a time and materials basis in accordance with Appendix C of DIR Contract No. DIR-TSO-3826.
 - (1) **Time and Materials Basis.** Charges for all Services performed on a time and materials basis will be invoiced in accordance to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3826. The rates set forth in a Statement of Work are effective through the end of the period specified in the Statement of Work or, if no such period is specified, through the end of the calendar year in which the Statement of Work is executed, after which CGI may change the applicable rates once every twelve (12) months upon DIR approval.
 - (2) **Fixed-Price Basis.** Charges for Services performed on a fixed-price basis will be based on the fixed-price specified in the Statement of Work plus Reimbursable Expenses unless the Statement of Work provides expressly that Reimbursable Expenses are included in the fixed-price.
- B. **Invoices.**
 - (1) **Technical Services.** CGI will submit invoices to Customer for Services and Reimbursable Expenses, in the period following the performance of the Services. Invoices for any other amounts will be submitted to Customer as the amounts come due. CGI will address invoices as specified in the Statement of Work or, if no address is specified, to the Statement of Work Manager. Each invoice will identify the Statement of Work to which it relates. For any Services performed

on a time and materials basis, the invoice will also state the total number of hours worked by billable labor category.

- (2) **Managed Services.** Customer will be billed annually in advance of the provision of Managed Services for recurring charges.
- C. **Reimbursable Expenses.** “Reimbursable Expenses” mean incidental expenses reasonably incurred by CGI in performing its obligations under the Contract Documents, including without limitation courier, document duplication, postage, long-distance telephone charges, pre-approved travel and living expenses in accordance to the Texas Travel Management Guide issued by the Comptroller of Public Accounts, and charges for any non-routine supplies and equipment called for in a Statement of Work or approved by Customer.
- D. **Taxes.** Taxes will be handled in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3826
- E. **Payment Terms.** All fees and expenses are to be paid to CGI in United States Dollars, by electronic funds transfer 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. CGI’s invoices are due and payable in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3826. Customer must pay all undisputed amounts on the invoice within the agreed payment period and promptly notify CGI of the specific amount in dispute and the reasons why it disputes the amounts. CGI and Customer will work together in good faith to resolve any timely disputed amount in a prompt and mutually acceptable manner. If a disputed amount is not resolved within thirty (30) days after the original payment due date receipt, the parties will resolve such dispute as provided in Appendix A, Section 11A of DIR Contract No. DIR-TSO-3826.

4. CUSTOMER RESPONSIBILITIES

- A. **Customer Personnel, Facilities and Resources.** Customer will provide CGI with timely access to appropriate Customer personnel and will arrange for CGI personnel to have suitable and safe access to Customer’s facilities and systems. Customer will also provide suitable office space and associated resources for CGI personnel working on-site, including all necessary computing and office support resources, and will undertake any other responsibilities described in the Statement of Work. The Statement of Work or the Project Plan will also specify any tasks or activities for which Customer is responsible and, if applicable, those tasks or activities that will be performed jointly by Customer and CGI.
- B. **Approvals and Information.** Customer will respond promptly to any CGI request to provide information, approvals, decisions or authorizations that are reasonably necessary for CGI to perform the Services in accordance with the Statement of Work. If neither the Statement of Work nor the associated Project Plan specify a period for Customer’s response, CGI will specify a reasonable time period in the context of the project schedule. CGI’s request may also describe the course of action CGI intends to follow if it does not receive a timely response from Customer, which may include suspension of the affected Services. CGI will be entitled to follow the described course of action in the absence of a timely response from Customer. Any subsequent change requested by Customer will be subject to mutual agreement and may result in a Change Order.
- C. **Use and Verification.** Customer is responsible for the results of using the software, hardware, equipment, Services and Deliverables in its business operations. Customer is also responsible for independent verification and testing of such results prior to using them in its business.

5. CHANGE ORDERS

- A. **Changes to Statements of Work.** Either party may propose changes to the scope or time schedule of the Services under a Statement of Work. Requests for changes will be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Services. The parties will mutually agree upon any proposed changes, including resulting equitable adjustments to costs and schedules for the performance of the Services. The agreed changes will be documented in one or more Change Orders.
- B. **Customer Delays.** If action or inaction by Customer, or its suppliers' failure to perform their responsibilities in a timely manner, prevents CGI from or delays CGI in performing the Services, CGI will be entitled to an equitable adjustment in the schedule for performance and the compensation otherwise payable to it under the applicable Statement(s) of Work. In such event, the parties will mutually agree upon a Change Order documenting the adjustments.
- C. **Effect on Statement of Work Prices.** Amounts payable pursuant to Change Orders will be in addition to any fixed prices or funding limitations on time and materials charges or Reimbursable Expenses.

6. NOT AN EXCLUSIVE AGREEMENT

Nonexclusive Agreement. This Agreement does not grant to CGI any exclusive rights to do business with Customer. Customer may contract with other suppliers for the procurement of comparable services. Except as agreed under a Statement of Work for Managed Services, Customer makes no commitment for any minimum or maximum amount of Services to be purchased under this Agreement. Likewise, nothing in this Agreement will prevent CGI from marketing, developing, using and performing services or products similar to or competitive with the services and products furnished to Customer.

7. PROPRIETARY RIGHTS

Intellectual Property will be handled in accordance to Appendix A, Section 5 of DIR Contract No. DIR-TSO-3826.

8. 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: (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. Confidential Information also includes the Contract Documents, CGI Materials, the CGI System, and the Customer-provided Managed Application(s), whether or not marked as such.
- 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.
- 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.

9. ACCEPTANCE

- A. **Procedures, In General.** Acceptance of Deliverables will be conducted in accordance with the following procedures. All terms specified in the following procedures are defaults that may be overridden by the applicable Statement of Work.
- B. **Written Deliverables.** CGI may submit interim drafts of a Written Deliverable to Customer for review. Customer agrees to review and provide comments to CGI on each interim draft within five (5) business days after receiving it from CGI. Customer will have the opportunity to review the Written Deliverable for an acceptance period of ten (10) business days after delivery of the final version of the Written Deliverable (the "Acceptance Period"). Customer agrees to notify CGI in writing by the end of the Acceptance Period either stating that the Written Deliverable is accepted in the form delivered by CGI or describing in reasonable detail any substantive deviations from the description of the Written Deliverable contained in the Statement of Work that must be corrected prior to acceptance of the Written Deliverable. If CGI does not receive any such deficiency notice from Customer by the end of the Acceptance Period, the Written

Deliverable will be deemed to be accepted. If Customer delivers to CGI a timely notice of deficiencies and the items specified in the notice are deficiencies, CGI will correct the described deficiencies within a reasonable period of time. CGI's correction efforts will be made at no additional charge if the Written Deliverable is being developed under a fixed-price Statement of Work. If the Written Deliverable is being developed on a time and materials basis, CGI's correction efforts will be made on a time and materials basis. Upon receipt of a corrected Written Deliverable from CGI, Customer will have a reasonable additional period of time, not to exceed ten (10) business days, to review the corrected Written Deliverable to confirm that the identified and agreed-upon deficiencies have been corrected. Customer will not unreasonably withhold, delay or condition its approval of a final Written Deliverable.

- C. **Software Deliverables.** Acceptance testing is an iterative process designed to determine whether the Software Deliverable performs the functions described in its approved Specifications and to discover and remove Nonconformities through repeated testing cycles. As used in this Agreement, "Nonconformity" means a reproducible condition in a Software Deliverable that prevents the Software Deliverable from performing the functions described in its Specifications such that the Software Deliverable does not operate or cannot be used in a production environment. At least forty-five (45) days prior to the date on which CGI is scheduled to deliver any Software Deliverable to Customer, Customer will deliver for CGI's review proposed testing procedures for the Software Deliverable, including without limitation the detailed test scripts, test cases, test data and expected results. At least thirty (30) days prior to the date on which CGI is scheduled to deliver the Software Deliverable to Customer, the parties will agree upon the testing procedures for the Software Deliverable (the "Acceptance Tests" or "Acceptance Testing").
- (1) The "Acceptance Test Period" for each Software Deliverable will be thirty (30) days. The Acceptance Test Period for each Software Deliverable will begin when CGI has completed and delivered the Software Deliverable to Customer's designated site, successfully completed CGI's installation test and notified Customer that the Software Deliverable is "Ready for Acceptance." CGI will not be obligated to deliver a Software Deliverable to Customer until Customer demonstrates the readiness of the target technical platform and environment, as described and according to the schedule specified in the Statement of Work.
 - (2) Customer will start to perform Acceptance Testing on each Software Deliverable promptly after receiving CGI's notice that the Software Deliverable is ready for Acceptance. Customer's Acceptance Testing will consist of executing test scripts from the Acceptance Tests during the Acceptance Test Period. If Customer determines during the Acceptance Test Period that the Software Deliverable contains a Nonconformity, Customer will promptly send CGI a written notice reporting the alleged Nonconformity. Nonconformity will be considered "Reported" only if it is described to CGI in sufficient detail to allow CGI to recreate it. CGI will modify the Software Deliverable to remove the Reported Nonconformity and will provide the modifications to Customer for re-testing. Customer will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from CGI.
 - (3) By the end of the Acceptance Test Period Customer will provide CGI with a final written list Reporting any outstanding Nonconformities (the "Punch List"). CGI will modify the Software Deliverable to remove the Nonconformities that are reported on the Punch List and will provide the modifications to Customer. Customer will have fifteen (15) business days after receipt of the modifications to

re-test the modified Software Deliverable to confirm that the Nonconformities that are reported on the Punch List have been removed. If any Nonconformity that were Reported on the Punch List have not been removed, Customer will provide CGI with written notice by the end of the re-testing period reporting any such Nonconformities. In such event, the procedures set forth in this Section 9.C(3) will be repeated for the remaining Nonconformities on the Punch List.

- (4) CGI and Customer each agrees to work diligently to achieve acceptance of Software Deliverables at the earliest possible date, and Customer will work diligently to put the Software Deliverable in live production operations. Acceptance of a Software Deliverable will take place when any of the following events occurs: (i) Customer gives CGI written notice of acceptance; (ii) Customer uses the Software Deliverable or any substantial portion of it in live production operations; (iii) the Acceptance Test Period expires without Customer having given CGI the Punch List; or (iv) the re-testing period expires without Customer having Reported any remaining Nonconformities on the Punch List.
- (5) CGI's modifications made pursuant to this Section 9 will be made at no additional charge if the Software Deliverable is being developed under a fixed-price Statement of Work. If the Software Deliverable is being developed on a time and materials basis, CGI's modifications made pursuant to this Section 9 will be made on a time and materials basis.

10. LIMITED WARRANTIES AND REMEDIES FOR BREACH OF WARRANTY

- A. **Quality of Services.** CGI warrants, for a period of thirty (30) days commencing when the Services are performed, that the Professional Services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such Services. If Customer believes there has been a breach of this warranty, it must notify CGI in writing within the warranty period stating in reasonable detail the nature of the alleged breach. If 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, at no additional charge, any affected Services to cause them to comply with this warranty, or terminate the Statement of Work in whole or in part. CGI warrants that Managed Services will be performed in a manner that meets or exceeds the applicable Service Levels (if any) set forth in a Service Level Agreement included as part of a Statement of Work. If CGI fails to meet the defined Service Levels, CGI's sole obligation and Customer's exclusive remedy shall be as set forth in the Service Level Agreement.
- B. **Software Deliverables Produced on a Fixed-Price Basis.** CGI warrants that, during any Warranty Period specified in the applicable Statement of Work (or if no Warranty Period is specified in the Statement of Work, for a period of thirty (30) days from delivery), each Software Deliverable developed on a fixed-price basis and delivered under that Statement of Work will continue to perform the functions described in its Specifications without Defects. As used in this Agreement, "Defect" means a reproducible material deviation of a Software Deliverable from its Specifications. If Customer believes there has been a breach of this warranty, it must notify CGI in writing within the Warranty Period describing the Defect in sufficient detail to enable CGI to recreate it. If there has been a breach of this warranty, then CGI's sole obligation, and Customer's exclusive remedy, will be for CGI to correct the Defect at no additional charge, or terminate the Statement of Work in whole or in part.

- C. **Investigation and Correction.** CGI may investigate and correct breaches of warranty at CGI's offices to the extent possible. If Customer requires CGI to travel to Customer's place of business to correct a breach of warranty that could have reasonably been corrected at CGI's place of business, Customer will reimburse CGI for the reasonable pre-approved travel time and Reimbursable Expenses of CGI's personnel in accordance to the Texas Travel Management Guide issued by the Comptroller of Public Accounts. If a reported breach of warranty is attributable to a cause other than a breach of the applicable CGI warranty, then CGI will be entitled to payment for its investigation and correction efforts on a time and materials basis at the rates applicable to the Statement of Work pursuant to Appendix C of DIR Contract No. DIR-TSO-3826.
- D. **Noninfringement.** CGI warrants that any original works of authorship developed by CGI personnel under a Statement of Work, including their use by Customer in unaltered form, will 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.
- E. **Exclusions.** CGI is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the item in question by anyone other than CGI and its subcontractors working at CGI's direction; (ii) the combination, operation or use of the item with other items CGI did not supply; (iii) Customer's failure to use any new or corrected versions of the item made available by CGI; (iv) CGI's adherence to Customer's specifications or instructions; or (v) any excused failure described in Section 15.B. CGI does not warrant that the operation of software, hardware, equipment or Deliverables provided by CGI will be uninterrupted or error-free.
- F. **Third-Party Products.** To the extent CGI has the legal right to do so, CGI agrees to assign or pass through to Customer or otherwise make available for the benefit of Customer, any manufacturer's or supplier's warranty applicable to any third-party software, hardware or equipment provided by CGI under a Statement of Work. CGI does not itself give or make any warranty of any kind with respect to third-party software, hardware or equipment.
- G. **Disclaimer.** CGI DOES NOT GUARANTEE THE ACCURACY OF ANY ADVISE, REPORT, DATA OR OTHER PRODUCT DELIVERED TO CUSTOMER THAT IS PRODUCED WITH OR FROM DATA OR SOFTWARE PROVIDED BY CUSTOMER. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, PERFORMANCE AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. CGI DOES NOT WARRANT THAT THE SERVICES OR ACCESS TO THE CGI SYSTEM WILL BE UNINTERRUPTED OR THAT THE RESULTS OF THE SERVICES WILL BE ERROR-FREE.

11. INDEMNIFICATION

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

12. TERM AND TERMINATION

- A. **Term.** This Agreement will commence on the Effective Date, and will expire on the first (1st) anniversary of that date unless terminated sooner in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3826 This Agreement shall have three (3) one (1) year renewal options exercised by Customer providing CGI thirty day written notice prior to the then-expiration date.
- B. **Termination.** Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3826.
- C. **Payment upon Termination.** CGI will be paid for all Services performed through the effective date of termination, plus associated Reimbursable Expenses and termination costs in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3826.
- D. **Survival.** Any provision of the Contract Documents that imposes or contemplates continuing obligations on a party will survive the expiration or termination of the Contract Document in which it is contained. The termination of any particular Statement of Work will not affect the parties' respective rights, duties and obligations under any other Statements of Work then in effect. If this Agreement expires or is terminated, its terms and conditions will continue to apply to any Statements of Work then in effect until the Statements of Work expire or are terminated.

13. LIMITATION OF LIABILITY AND REMEDIES

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

14. LAW AND DISPUTES

- A. **Governing Law.** Any claim, controversy or dispute arising under or related to the Contract Documents will be governed by the laws of the State 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 the applicable state statute 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. **Export Control.** 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 the Contract Documents is exported or re-exported directly or indirectly in violation of law.
- C. **Dispute Resolution.** Dispute Resolution will be handled in accordance to Appendix A, Section 11A of DIR Contract No. DIR-TSO-3826.
- D. **Limitation of Actions.** Unless Customer is a public entity subject to its applicable statute of limitations, no proceeding, regardless of form, arising out of or related to the Contract Documents 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.

15. GENERAL

- A. **Notices.** Notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3826.
- B. **Force Majeure.** Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3826.
- C. **Reasonable Behavior.** Each party will act in good faith in the performance of its respective responsibilities under the Contract Documents and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other party in order to perform its responsibilities under the Contract Documents.
- D. **Assignment.** Assignment will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3826.
- E. **Integration.** DIR Contract No. DIR-TSO-3826 and the Contract Documents constitute the entire agreement between the parties, and supersede all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of the Contract Documents. The Contract Documents may be modified or amended solely in a writing signed by both parties. The parties agree that any pre-printed terms contained in Customer's purchase orders, acknowledgments, shipping instructions, or other forms or in CGI's invoices, that are inconsistent with or different from the terms of the Contract Documents will be void and of no effect even if signed by the party against which their enforcement is sought.
- F. **Severability.** The provisions of the Contract Documents 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 the Contract Documents, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.
- G. **Order of Precedence.** In the event of any conflict between or among the provisions contained in the Contract Documents, the following order of precedence will govern: (i) DIR Contract No. DIR-TSO-3826; (ii) this Agreement, exclusive of its Exhibits; (iii) Exhibits to this Agreement; and (iv) Statements of Work (except as to terms specifically identified in a particular Statement of Work as modifying or amending terms of this Agreement, which terms will control over the Agreement for that Statement of Work only). Notwithstanding the preceding, with respect to Managed Services, the terms of Addendum A to this Agreement shall govern in the event of a conflict with terms of this Agreement.
- H. **Publicity.** Neither party may use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other party.
- I. **No Waiver.** No failure or delay by a party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the party may have under the Contract Documents.
- J. **Third Party Beneficiaries.** There are no intended third party beneficiaries of any provision of the Contract Documents.
- K. **Nonsolicitation.** During the term of the Contract Documents 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 the Contract Documents, unless the hiring party obtains the written consent of the other party. The actual damages attributable to a breach of the provisions of this Section would be difficult to determine and prove. Accordingly, the parties agree that if either party breaches this Section , the breaching party will promptly pay the non-breaching party liquidated damages in an amount equal to the employee’s annual salary (including bonuses and incentive compensation) prior to the breach, such sum being a reasonable measure of the damages reasonably anticipated by the parties. 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).

- L. **UCITA.** Notwithstanding anything to the contrary, the parties expressly agree that the provisions of the Uniform Computer Information Transactions Act (UCITA) as set forth in any 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.
- M. **Attachments.** The Exhibits or Addenda referred to in and attached to this Agreement are made a part of it as if fully included in the text.
 - (1) Exhibit A: Statement of Work
 - (2) Addendum A: Supplemental Terms for Managed Services
- N. **Counterparts.** The Contract Documents may be signed in one or more counterparts, each of which will be deemed an original and all for which when taken together will constitute the same agreement. Any copy of the Contract Documents made by reliable means shall be considered an original.

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

CGI Technologies and Solutions Inc. (CGI)

_____ (Customer)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SERVICES AGREEMENT

EXHIBIT A

Statement of Work Form

STATEMENT OF WORK No. ____

This Statement of Work Number ____ is issued pursuant to the Services Agreement dated as of _____ (the "Agreement") between _____ ("Customer") and CGI Technologies and Solutions Inc. ("CGI"). This Statement of Work incorporates the terms and conditions of DIR Contract No. DIR-TSO-3826 and the Agreement as if the Agreement were fully set forth in the text of this Statement of Work.

1. Effective Date of this Statement of Work.

This Statement of Work is effective as of *[insert effective date]**[for time and materials also insert the date through which the Statement of Work is effective].*

2. Services to be Performed and Schedule of Performance.

[Insert description of Services to be performed.]

CGI will provide to Customer monthly written reports of the progress of the work.

3. Deliverables.

[If there are no Deliverables that are subject to acceptance testing, do not include this section:]

The following are the Written Deliverables and Software Deliverables subject to acceptance testing under this Statement of Work: *[List the Written Deliverables and Software Deliverables to be provided and the schedule for performing the Services. For each Software Deliverable, specify the design specifications or the document containing the design specifications for the Software Deliverable, their respective acceptance criteria, as well as the acceptance tests and procedures to be employed. Specify the duration of the Acceptance Test Period (the default in the Agreement is thirty (30) days). If this is a fixed-price Statement of Work, specify any Warranty Period that is to begin on Acceptance of the Software Deliverable.]*

4. Compensation.

A. Method: *[check one]*

Any pricing shall be provided in Appendix C of DIR Contract No. DIR-TSO-3826

Time and Materials Basis. Cost Estimate: _____, *[Estimated Reimbursable Expenses: _____,*

Fixed-Price Basis. Fixed Price: _____, *[Estimated Reimbursable Expenses: _____.]* Customer will pay _____% of the fixed-price *[Insert milestone payment schedule.]*

Other Basis. *[Specify method of compensation.]*

B. Payment Terms: Payments will be handled in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3826. *Insert the payment terms if not as provided in the Agreement.]*

5. Statement of Work Managers.

The Statement of Work Managers are:

<u>CGI</u>	<u>Customer</u>
_____	_____
_____	_____

6. Resources and Responsibilities of Customer.

Customer will provide the following resources and has the following responsibilities in supporting CGI's performance of the Services:

- A. Services or Support: *[Describe any portions of the project that are to be performed by Customer or provided by Customer to CGI. In addition, describe any support functions that are to be performed by Customer].*
- B. Facilities and Equipment: *[Describe any facilities, equipment, tools, supplies, telephone lines and service, office support and other sorts of equipment, facilities, or related items other than as provided in the Agreement.]*
- C. Environments: *[Specify any development, testing, implementation or other environments to be provided by Customer].*
- D. Proprietary Materials: *[List any proprietary materials to be provided by Customer.]*
- E. Other:

7. Other Provisions.

[Insert any additional terms agreed to by the parties.]

Agreed to and accepted by:

CGI Technologies and Solutions Inc. (CGI)

_____ (Customer)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SERVICES AGREEMENT
ADDENDUM A
SUPPLEMENTAL TERMS FOR MANAGED SERVICES

This Addendum is a supplement to the terms and conditions of the Agreement and shall apply to CGI's provision of Managed Services under a Statement of Work.

1. DEFINITIONS

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

- A. "CGI Materials" shall have the meaning set forth in Section 7.A.
 - B. "CGI System" means, collectively, all of the components of the infrastructure and computing environment used by CGI to perform the Services, whether owned by CGI or its suppliers, including the Managed Application(s), CGI or third party facilities, hardware, operating systems, software applications and associated databases, tables, data and documentation and training materials. "CGI System" excludes Managed Application(s) to the extent the Managed Application is a third party product provided to CGI by Customer.
 - C. "Content" means any information, data, and any other materials placed by Customer and/or its customers and/or by CGI on the Customer's behalf onto the CGI System.
 - D. "Managed Application(s)" means the proprietary software application(s) listed in the Statement of Work, if any, that will be hosted and operated for use in providing Services to Customer.
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2. PERFORMANCE OF THE SERVICES

- A. **General.** Unless and except to the extent the applicable Statement of Work expressly provides otherwise, Customer shall use the Services only for Customer's internal business purposes, not for resale or otherwise for the benefit of third parties.
- B. **Service Levels.** CGI will perform the Services in a manner that meets or exceeds any applicable Service Levels set forth in a Service Level Agreement attached to the Statement of Work authorizing the Services. For any failure of the Services to meet or exceed the applicable Service Levels, Customer's remedy shall be as specified in the Service Level Agreement. Such remedy will be Customer's sole and exclusive remedy and CGI's sole and exclusive obligation and liability in respect of such failure.
- C. **Use of Third Party Suppliers.** Customer acknowledges that CGI may obtain products and services used in providing the Services from, and otherwise delegate obligations hereunder to, its Affiliates or other third party suppliers. Unless specifically indicated otherwise, CGI shall nevertheless be responsible to Customer for performance of the Services based on the use of such Affiliates or third party suppliers.
- D. **Right to Make Changes to the CGI System.** CGI may make any changes in the CGI System used in performing the Services that CGI determines in its sole discretion to be necessary or appropriate, including changes in facilities, computer hardware, systems and/or applications software, programming languages, data communications, and location of systems and service equipment. CGI will provide prior notice (or, in the event of an emergency, prompt notice after the occurrence of such emergency) if CGI believes such

changes have a reasonable likelihood of adversely affecting Customer's use of the CGI System.

3. CERTAIN CUSTOMER RESPONSIBILITIES FOR MANAGED SERVICES

- A. **Customer Data and Information.** Whenever CGI's performance of the Services is dependent upon Customer's furnishing CGI with a Managed Application, Customer interfaces, connectivity, data, documents, information, materials or approvals, Customer shall furnish such items in a timely fashion in a reasonable format specified by CGI, or such other format as mutually agreed by the parties in writing. Customer is responsible for ensuring that all physical media that Customer furnishes to CGI for processing meet the specifications of the manufacturer of the equipment with which such media are to operate and any other specifications that CGI may reasonably establish. Customer is also responsible for the adequacy and accuracy of all data and information that Customer furnishes to CGI and the results obtained therefrom. Customer warrants that any Customer-provided specifications or requirements around which Services are configured will be in compliance with applicable federal, state and local laws and regulations. Customer warrants that it has acquired all necessary licenses and consents from third party vendors for those Customer-provided items required for CGI to perform Services hereunder.
- B. **Access to and Use of CGI System.** If it is necessary for Customer to access and use the CGI System in receiving the Services, Customer agrees that use of the portion of the CGI System to which access is given shall be (i) in compliance with the terms of the Contract Documents and federal, state and local laws and regulations and communications common carrier tariffs applicable CGI, (ii) solely for Customer's own internal use in receiving the Services, unless otherwise permitted under the Statement of Work, and (iii) for proper business purposes. Customer will not disclose, download, decompile or re-engineer any Managed Application provided by CGI or its licensors and used in the performance of Services. As part of CGI's security measures, it may assign to Customer one or more user or identification codes and associated passwords that will enable Customer and its users to access the CGI System. Customer agrees to maintain the security of its user or identification codes and associated passwords and agrees to be responsible for their proper use by its employees and, where permitted, its contractors. Customer agrees to comply with any rules of operation and security procedures established by CGI for access to and use of the CGI System. Customer agrees that neither it nor its employees or agents will attempt to gain or allow access to any data, files or programs of CGI to which they are not entitled under the Contract Documents, and that if such access is obtained Customer will immediately report such access to CGI, cease all unauthorized access, return all CGI, third party, or CGI customer information obtained as a result of such unauthorized access, and safeguard any CGI, third party, or CGI customer information obtained as a result of unauthorized access to CGI Confidential Information. Customer will be responsible for the actions of its employees, agents, and permitted contractors in connection with their access to and use or misuse of the CGI System.
- C. **Content.** Customer warrants that (i) the Content does not and will not contain unlawful, discriminatory, libelous, harmful, obscene or otherwise objectionable material of any kind and does not and will not violate any right of privacy or publicity, (ii) the Content transmitted during the term of this Agreement and the use of the CGI System pursuant to the Contract Documents will not encourage conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international laws, codes, ordinances or regulations, and (iii) Customer shall not

attempt to gain unauthorized access to other computer systems, any application/service for which Customer has not paid fees to use, or data and information belonging to others that is also hosted on the CGI System. Customer warrants that it will not propagate computer worms, disabling codes or viruses or use the CGI System to make unauthorized entry into any other computer or machine.

- D. **Compliance with Laws.** Except as expressly provided in a Statement of Work, Customer shall be solely responsible for ensuring that the Services will comply with all laws, rules, and regulations and decisions imposed by any jurisdiction in which the Services are received or used.

4. **Reserved**

5. **Reserved**

6. **TERMINATION**

- A. **Termination of a Statement of Work for Managed Services for Convenience.** Termination for Convenience shall be in accordance with Appendix A, Section 11B.3 of the DIR Contract No. DIR-TSO-3826.
- B. **Transition Services.** In connection with termination or expiration of any Statement of Work, Customer may request CGI assistance in migrating Customer's processing being performed by CGI under that Statement of Work to the control of Customer or an alternate vendor designated by Customer. Provided Customer is current in its payment to CGI under the Contract Documents, CGI will perform reasonable transition services under a separate Statement of Work for a period of up to six (6) months on a time and materials basis at CGI's then current Professional Services Rates. During the transition period, CGI will provide Customer a copy of Customer's data in an agreed format, as required for the transition. CGI may provide additional transition services as mutually agreed between the parties. At the end of the transition period, Customer will return to CGI any CGI Materials in Customer's possession or control and cease all access to the CGI System.
- C. **Payment upon Termination.** Customer will also be responsible for paying CGI CGI's transition services and any Services CGI continues to provide at Customer's request during the transition period, and (iii) early termination fees as further provided in a Statement of Work.

7. **ADDITIONAL REMEDIES**

- A. **Errors in Processed Data.** Customer shall be solely responsible for reviewing the accuracy of any processing output provided by CGI prior to making use of such output, including responsibility for output reports. If any such results are inaccurate due to the fault of CGI, CGI's sole obligation shall be to reprocess the affected data at no additional charge to Customer. If any such results are inaccurate due to the fault of Customer, Customer shall provide corrected data and CGI shall be paid by Customer on a time and materials basis to reprocess the corrected data. CGI shall not be responsible or liable in any other manner for any such results (whether foreseen or unforeseen). If Customer has not notified CGI in writing of any claimed errors in such results within ten (10) days after receiving them, such results shall be deemed to have been accepted by Customer.

- B. **Loss of Customer Data.** If Customer data is lost, corrupted or destroyed while in the possession or control of CGI due to CGI's fault or negligence, CGI will use commercially reasonable efforts to reconstruct such data at CGI's expense provided any files, data, programs or other information that may be necessary to accomplish such reconstruction but which are not in CGI's possession or control are promptly furnished to CGI by Customer upon request. If CGI is unable to satisfy its obligations under this Section 7.B, CGI's liability to Customer will nevertheless be limited in accordance with the provisions of this Section 7.

8. RECORDS AND AUDIT

In addition to the audit rights in DIR Contract No. DIR-TSO-3826, Customer shall have the rights specified in this Section 8.

- A. **Records.** Customer and CGI each agree to keep clear and accurate records relating to their activities under the Contract Documents for at least the immediately preceding two (2) years from any point in time during the term of this Agreement.

B. **Customer-required Audits Related to CGI Hosting Services.**

- (1) **Audit Regarding Invoiced Amounts and Service Levels.** Upon thirty (30) days prior written request, Customer will be allowed to conduct an audit reasonably necessary to verify: (i) amounts invoiced to Customer for the CGI hosting Services, and (ii) CGI's reports on Service Levels.

CGI will provide reasonable access to relevant CGI personnel, books and records necessary to conduct the foregoing audit, to (i) Customer's internal auditor, and (ii) a nationally recognized audit firm appointed by Customer. Such audits will be conducted at Customer's expense and may be conducted periodically during the term of this Agreement, but not more than once per contract year, except for more frequent audits reasonably necessary to confirm that deficiencies identified in the preceding audit have been effectively addressed. Such additional audits will be subject to terms and conditions to be agreed upon by the parties.

- (2) **Audits Concerning CGI's Internal Controls.** Each year, at its cost and expense, CGI will cause its external auditors to (i) perform a SSAE NO. 16 audit regarding internal controls that CGI applies, on a common basis, to the primary hosting facility and associated activities provided to its outsourcing Customers (the "Internal Controls Audit"), and (ii) produce an audit report in connection therewith (the "Internal Controls Audit Report"). On or about August 1st of each year, CGI will arrange for the auditor to provide to Customer a copy of the most current Internal Controls Audit Report Cover Letter. Customer may view the full report at a CGI facility with reasonable advance notice. In the event that Customer reasonably requests audit and reporting that are not covered by the Internal Controls Audit or that are on a different audit period other than the standard CGI audit period, such additional audit and reporting will be at Customer's cost and expense and will be addressed through the change control procedures.
- (3) **Confidentiality of Audits.** Where applicable for the purpose of this Section, Customer's external auditor must provide CGI with Customer's written authorization to act as its external auditor and will then be deemed to be Customer's representative. No proposed auditor will be a competitor of CGI. Any external auditor retained by Customer in connection with such audits will execute a non-disclosure agreement reasonably acceptable to CGI. All audit reports contemplated by this Section and their content will be deemed

confidential information and will be subject to the confidentiality provisions contained in this Agreement.

- (4) Cure of Deficiency. In the event that an audit contemplated by this Section identifies a deficiency that causes or may cause a material breach of CGI's obligations under this Agreement, CGI will (i) cure such deficiency within a commercially reasonable time period given the nature of the deficiency, and (ii) confirm such cure to Customer.

C. Customer Audits Not Related to CGI Hosting Services and CGI Audits. In order for Customer to verify amounts invoiced to Customer for the CGI Services not related to hosting, and for CGI to verify Customer's compliance with the Agreement, each party shall have the right to have an independent third party (the "Auditor") audit such records of the other party, no more than once every twelve (12) months. Any such audit shall be conducted during regular business hours and in such a manner so as not to interfere unreasonably with normal business activities, and the party requesting the audit shall provide reasonable advance written notice of such audit to the other party. The party requesting the audit shall bear the expenses of any such audit. Customer shall promptly pay any amount found due and owing to CGI, in accordance with this Section 8.C. If the audit reveals an overpayment, CGI shall promptly refund the overpayment to Customer. The Auditor may not be paid on a contingency or other basis related to the outcome of the inspection, and shall execute a confidentiality agreement with the party requesting the audit in a form reasonably acceptable to the parties that prohibits the Auditor from otherwise divulging to third parties or using information obtained in connection with the inspection.

D. Security Policies. Access to CGI's facility, requires advance notice and must be in accordance with all terms of this Agreement as well as compliance with CGI's then-current security and confidentiality policies and procedures which includes but is not limited to being accompanied by CGI at all times.