

# Appendix E to DIR Contract No. DIR-SDD-2513

## SERVICE AGREEMENT

No. \_\_\_\_\_

This Service Agreement ("Agreement"), effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201X (Effective Date), between **General Dynamics Information Technology, Inc.**, ("Broker" or "General Dynamics") and \_\_\_\_\_, (the "Customer") (collectively, the "parties"), consists of:

**Section A – Parties and Services**

**Section B – Minimum Terms of Use**

**Section C – Cloud Brokerage Service Level Agreement**

WHEREAS, General Dynamics has been awarded prime contract number \_\_\_\_\_ by the State of Texas Department of Information Resources; and

WHEREAS, General Dynamics has been selected to provide \_\_\_\_\_ services to \_\_\_\_\_, and

NOW THEREFORE, in consideration of the mutual covenants, agreements, and promises set forth herein, the parties agree as follows:

### SECTION A – PARTIES AND SERVICES

1. General Dynamics agrees to provide \_\_\_\_\_ services to the Customer.
2. Customer agrees that performance of services is subject to the Minimum Terms and Conditions set forth in Section B and the Service Level Agreements set forth in Section C.
3. The period of performance of this Agreement is \_\_\_\_\_ through \_\_\_\_\_.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement on the Effective Date first written above:

XXXXXXXXXXXXXXXXXXXX

**GENERAL DYNAMICS INFORMATION  
TECHNOLOGY, INC.**

Address: \_\_\_\_\_

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

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

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

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

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

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

## SECTION B – MINIMUM TERMS OF USE

### 1. Access to the CSB

Broker provides a cloud services broker service (“CSB”) based on a cloud service broker platform developed by a third party service provider (“Platform Provider”). The CSB is governed by these terms of use (“Minimum Terms of Use”). To access the CSB or some of the resources it has to offer, you may be asked to provide certain registration details or other information. It is a condition of your use of the CSB that all the information you provide on the CSB will be correct, current, and complete.

### 2. Restrictions On Use

You may use the CSB only for purposes expressly permitted by the CSB on-line help documentation. You may not use the CSB for any other purpose, including any commercial purpose, without the Broker's express prior written consent. For example, you may not (and may not authorize any other party to) (i) co-brand the CSB or (ii) frame the CSB, or (iii) hyper-link to the CSB, without the express prior written permission of an authorized representative of the Broker. For purposes of these Terms of Use, “co-branding” means to display a name, logo, trademark, or other means of attribution or identification of any party in such a manner as is reasonably likely to give a user the impression that such other party has the right to display, publish, or distribute the CSB or content accessible within the CSB. You agree to cooperate with the Broker in causing any unauthorized co-branding, framing or hyper-linking immediately to cease. General Dynamics Cloud Brokerage Services may only be used for lawful purposes, and Customer shall bear the responsibility for ensuring that such use complies with all applicable laws.

2.2 Customer must immediately notify General Dynamics of any breach, or attempted breach, of security known to Customer. Customer is responsible for ensuring that its application is configured in a secure manner. Customer may not, through action or inaction, allow others to use its hosted environment for illegal activities.

2.3 Customer acknowledges and accepts responsibility and liability for Customer Materials posted by its employees and users. General Dynamics has no obligation to monitor, review, or edit the Customer Material's and does not endorse or guarantee the accuracy or completeness of the information contained therein.

2.5 Customer may not circumvent user authentication or security of any host, network, or account (referred to as “cracking,” or “hacking”), nor interfere with service to any user, host or network (referred to as “denial of service attacks”).

2.6 Violations of this policy shall be reported to General Dynamics.

### 3. Hyper-Links

The CSB may be hyper-linked to other web sites which are not maintained by, or related to, the Broker or Platform Provider. Hyper-links to such web sites are provided as a service to users and are not sponsored by or affiliated with the CSB or the Broker or the Platform Provider. The Broker has not reviewed any or all of such web sites and is not responsible for the content of those web sites. Hyper-links are to be accessed at the user's own risk, and the Broker makes no representations or warranties about the content, completeness or accuracy of these hyper-links or the web sites hyper-linked to the CSB. Further, the inclusion of any hyper-link to a third-party web site does not necessarily imply endorsement by the Broker or Platform Provider of that web site.

### 4. Feedback

You may from time to time provide suggestions, comments or other feedback (“Feedback”) to the Broker or Platform Provider or in the CSB itself with respect to the CSB Platform. You agree that all Feedback is and shall be given entirely voluntarily and the Broker or Platform Provider shall be free to use, disclose,

reproduce, license or otherwise distribute, and exploit the Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

**5. Disclaimer**

You understand that the Broker cannot and does not guarantee or warrant that files available for downloading from the Internet will be free of viruses, worms, Trojan horses or other code that may manifest contaminating or destructive properties. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for accuracy of data input and output, and for maintaining a means external to the CSB for the reconstruction of any lost data. The Broker does not assume any responsibility or risk for your use of the Internet.

Information on the CSB is not promised or guaranteed to be correct, current, or complete, and the CSB may contain technical inaccuracies or typographical errors. The Broker assumes no responsibility (and expressly disclaims responsibility) for updating the CSB to keep information current or to ensure the accuracy or completeness of any posted information. Accordingly, you should confirm the accuracy and completeness of all posted information before making any decision related to any services, products, or other matters described in the CSB.

Additional or different terms, conditions, and notices will apply to specific cloud services offered by third party cloud services providers and procured by you through the CSB. Such additional or different terms, conditions, and notices will apply to the specific cloud services. Neither Broker nor Platform Provider has any responsibility whatsoever for the third party cloud services procured through the CSB.

**6. Security**

Any passwords used for the CSB are for individual use only. You will be responsible for the security of your password (if any).

Broker and Platform Provider reserve the right to fully cooperate with any law enforcement authorities or court order requesting or directing Broker to disclose the identity of anyone posting any e-mail messages, or publishing or otherwise making available any materials that are believed to violate these Terms of Use.

**SECTION C – CLOUD BROKERAGE SERVICE LEVEL AGREEMENT**

## 1. System Availability

- 1.1 The CSB Platform is designed to be available 24 hours a day, 7 days a week, 365 days a year, except during system maintenance periods and technology upgrades and as otherwise set forth below. “Uptime” or “Available” means the End Customer or Partner is able to log in and access the CSB or the CSB Platform subject to the following provisions. “Unplanned Downtime” means any time during which the services are not Available, but does not include any time during which the services or any services component are not Available due to:
- A failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents directed or provided or performed by Customer;
  - Planned outages, scheduled or announced maintenance or maintenance windows, or outages initiated by General Dynamics or Gravitant, Inc. at the request or direction of Texas Department of Information Resources or End Customer for maintenance, activation of configurations, backups or other purposes that require the service to be temporarily taken offline;
  - Outages resulting from Customer’s equipment or or Platform Infrastructure not within the sole control of General Dynamics or Gravitant;
  - Events resulting from an interruption or shut down of the services due to circumstances reasonably believed by General Dynamics or Gravitant to be a significant threat to the normal operation of the services, the operating infrastructure, the facility from which the services are provided, access to, or the integrity of End Customer data (e.g., a hacker or a virus attack);
  - Outages due to denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and General Dynamics’s other vendors), and other force majeure events;
  - Inability to access the services or outages caused by Customer’s conduct, including negligence or breach of material obligations under the agreement;;
  - Lack of availability or untimely response time of Customer to respond to incidents that require Customer participation for source identification and/or resolution, including meeting Customer’s responsibilities for any services;
- 1.2 General Dynamics warrants that the Uptime Percentage (as defined below) in any calendar month shall not be less than ninety nine and five-tenths percent (99.5%) (“Minimum Uptime Percentage”).
- 1.3 Uptime Percentage is calculated by dividing the difference between the total number of minutes in the calendar month and any Unplanned Downtime by the total number of minutes in the calendar month, and multiplying the result by 100 to reach a percent figure.
- 1.4 The production CSB Platform is not available if, based on monitoring by Gravitant, the CSB Platform does not respond to a request issued by Gravitant’s monitoring software. Gravitant’s records and data that will be the sole basis for all Uptime Percentage calculations, for the sole purpose of determining the accuracy of Uptime Percentage calculations in accordance with this Service Level Schedule. Notwithstanding the foregoing, Customer may retain a third party monitoring service provider to monitor Availability at Customer’s expense, so long as such monitoring does not impact the performance of the CSB platform, and in such event General Dynamics and Gravitant shall have immediate access to the monitoring results (and any alerts generated by the monitoring services) and General Dynamics and Gravitant shall not be responsible for independently monitoring the CSP Platform. Neither General Dynamics nor Gravitant is responsible for any impact by a Customer’s monitoring service upon performance of the CSB Platform.

## **2. Planned Maintenance**

- 2.1 General Dynamics reserves the right to perform regularly scheduled maintenance from 8:00 pm Friday to 3:00 am Monday (U.S. Central Time) each weekend and during 8:00 pm to 3:00 am (U.S. Central Time) each Monday to Thursday (collectively, “Planned Maintenance”); maintenance that occurs outside of this time frame will not be considered Planned Maintenance for purposes of calculating Uptime unless agreed to in advance by End Customer.
- 2.2 “Planned Maintenance” is a period during which General Dynamics may suspend availability of all or part of the production Services in order to carry out maintenance activities.

## **3. Remedies**

- 3.1 In the event that the Uptime Percentage in a calendar month falls below the Minimum Uptime Percentage set forth in Section 1.1 above, Partner shall be entitled to the following service credits (“Service Credits”):
- 99% to 99.4% - 3.6 hours < Calendar Month Downtime < 7.20 hours - 1 Service Credit
  - 98% to 98.99% - 7.2 hours <= Calendar Month Downtime < 14.4 hours - 2 Service Credits
  - 97% to 97.99% - 14.4 hours <= Calendar Month Downtime < 21.6 hours - 4 Service Credits
  - 95% to 96.99% - 21.6 hours <= Calendar Month Downtime < 36 hours - 6 Service Credits
  - 90% to 94.99% - 36 hours <= Calendar Month Downtime < 72 hours - 8 Service Credits
  - Below 90% - Calendar Month Downtime >= 72 hours - 10 Service Credits
- 3.2 Each Service Credit has a value of \$250 US Dollars. Any such claim for credit must be made in writing within thirty (30) days of the end of the month in which that such failure occurred. On receipt of a written claim from Customer, General Dynamics will review the request and calculate the number of Service Credits to be applied to Partner’s outstanding and/or future invoices.
- 3.3 The total Service Credits used in any calendar month will in no event exceed an amount equal to 50% of the Cloud Brokerage Fees for such month, and unused Service Credits shall rollover to subsequent months.