

**DIR-CPO-4411**

**Appendix D**

**MASTER SERVICES AGREEMENT**

This MASTER SERVICES AGREEMENT (the “Agreement”), dated as of \_\_\_\_\_, 20\_\_, is by and between \_\_\_\_\_ (“Customer”), and Cloud Ingenuity, L.L.C., a Texas limited liability company, (“Cloud Ingenuity”) (“Vendor”).

**RECITALS**

WHEREAS, Customer desires to engage Cloud Ingenuity to converged hybrid cloud integration and/or other products and services as described in the Statement of Work (as defined herein);

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth in DIR Contract DIR-CPO-4411 and herein, the receipt and sufficiency of which are hereby acknowledged, Customer and Cloud Ingenuity agree as follows:

**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“Confidential Information” shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 10.H.

“Customer” means the DIR Customer that has contracted with the Vendor, as the case may be, for the Deliverables to be provided under any Statement of Work.

“Deliverables” means all products, services, hardware, software, programs, documentation and other items to be provided to the Customer pursuant to any Statement of Work.

“Preexisting Materials” means, with respect to any party, all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, developed outside of the scope of this Agreement by such party.

“Intellectual Property” shall be defined and referenced in Appendix A of DIR Contract DIR-CPO-4411, Section 5.A.

## **ARTICLE 2 SERVICES**

**Section 2.1 Engagement of Vendor.** On the terms and conditions set forth in DIR Contract DIR-CPO-4411 and this Agreement, the Customer hereby engages the Vendor on a non-exclusive basis, and the Vendor hereby accepts such engagement, to develop and provide the products or services, as described and agreed upon by the parties in any statement of work entered into by both parties in accordance with the terms of this Agreement (each a “Statement of Work”). Each Statement of Work will describe the terms and scope of an individual project or series of related projects to be performed by the Vendor for, or in collaboration with, the Customer (each, a “Project”), including: (a) the Customer for whom such work is being performed; (b) the tasks to be performed and the goods, products, merchandise and materials to be provided; (c) the schedule for the Project; (d) the Deliverables to be received; (e) the specifications of the Deliverables, if any; (f) the fees and expenses for the Project; (g) the location of the Project; and (h) any unique conditions or terms. Each Statement of Work will be governed by the terms of DIR Contract DIR-CPO-4411 and this Agreement, and the terms of such Statement of Work. If there is any conflict between the provisions of DIR Contract DIR-CPO-4411, this Agreement and any Statement of Work, DIR Contract DIR-CPO-4411 will govern. No Statement of Work will be effective until it is executed by both parties.

**Section 2.2 Additional Statements of Work.** After execution of this Agreement, the Customer may desire to engage the Vendor for additional Projects. If the Customer desires to engage the Vendor to perform additional Projects, and to the extent allowable by DIR Contract DIR-CPO-4411, the Customer will request, in writing, a proposal from the Vendor to undertake a Project, or the Customer, in its discretion, may deliver to the Vendor a proposal detailing the requirements of the Project. If willing to perform such Project, the Vendor will deliver to the Customer a draft Statement of Work and the parties will negotiate any changes or modifications to the draft Statement of Work. The draft Statement of Work will not be binding on either party until it has been executed by both parties. Such Statement of Work will be deemed an amendment to and part of this Agreement.

## **ARTICLE 3 PERFORMANCE OF SERVICES**

**Section 3.1 Performance of Services.** Each party shall perform all services and provide all Deliverables hereunder in a timely, professional and workmanlike manner and in the manner and within the timeframe established by the relevant Statement of Work and in accordance with the terms and conditions set forth in DIR Contract DIR-CPO-4411 and this Agreement.

**Section 3.2 Personnel.** Each party is solely responsible for all of its employees and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding other payroll taxes, if applicable, and all other applicable expenses related to the such employees. Each party will cause each of its employees who provide services or perform work under any Statement of Work to execute written agreements, if such an agreement has not previously been executed by each employee, in form and substance reasonably acceptable to the other party, that bind such employees to confidentiality provisions that are at

least as protective of Confidential Information as the provisions contained in Appendix A, Standard Terms and Conditions of DIR Contract DIR-CPO-4411.

**Section 3.3 Representations and Warranties.** Each party represents and warrants to the other party that: (a) all work will be performed in a professional and workmanlike manner in accordance with the best industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and shall devote adequate resources to meet its obligations under this Agreement; (b) it is in compliance with, and will perform all services hereunder in compliance with, all applicable law; and (c) all Deliverables delivered by such party (i) will not infringe, misappropriate or otherwise violate any Intellectual Property or other right of any third party; and (ii) will comply with all applicable laws.

#### **ARTICLE 4 FEES**

**Section 4.1 Fees; Reimbursable Expenses.** Subject to all terms and conditions set forth in DIR Contract DIR-CPO-4411, this Agreement and the applicable Statement of Work, the Customer shall pay the Vendor the amounts and in the timeframe set forth in the applicable Statement of Work. Unless otherwise specified in a Statement of Work or approved in writing in advance by the Vendor, the actual fees and expenses paid by the Customer to the Vendor will not exceed the amount specified on the applicable Statement of Work. The Customer will reimburse the Vendor for direct, documented, out-of-pocket expenses incurred by the Vendor in performing its obligations and approved by the Customer in advance.

**Section 4.2 Payment.** Payment shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 8.J.

**Section 4.3 Records.** Records shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 9.C.

#### **ARTICLE 5 INTELLECTUAL PROPERTY.**

**Section 5.1 Intellectual property matters** shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 5.

#### **ARTICLE 6 TERM AND TERMINATION**

**Section 6.1 Term.** This Agreement will remain in effect in accordance with DIR Contract DIR-CPO-4411 (the "Term"). If the term of any Statement of Work extends beyond the term of this Agreement, then this Agreement will survive with respect to that Statement of Work until that Statement of Work expires or is otherwise terminated.

**Section 6.2 Termination.** Termination shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 11.B.

**ARTICLE 7  
REPRESENTATIONS AND WARRANTIES.**

Each party represents and warrants to the other party that: (a) if an entity, it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority (and capacity if an individual) to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder; (c) the execution of this Agreement has been duly authorized by all necessary organizational action on the part of the party; and (d) when executed and delivered by both parties, DIR Contract DIR-CPO-4411 along with this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with their terms.

**ARTICLE 8  
INDEMNIFICATION.**

**Section 8.1 Indemnification** shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 10.A.

**ARTICLE 9  
CONFIDENTIALITY.**

**Section 9.1 Confidentiality** shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 10.H.

**ARTICLE 10  
NON-HIRE; NON-ACCESS**

**Section 10.1 Non-Access.** Commencing on the date of termination or expiration of this Agreement and continuing thereafter, no party will access the other party's computer systems, download files or any information from such other party's computer systems or in any way interfere, disrupt, modify or change any computer program used by such other party or any data stored on such other party's computer systems.

**Section 10.2 Amendment.** Shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 4.B.

**ARTICLE 11  
MISCELLANEOUS.**

**Section 11.1 Notices.** shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 12:

If to Customer, to:  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Attn: \_\_\_\_\_

If to Cloud Ingenuity/Vendor, to:  
[\_\_\_\_\_]\_\_\_\_\_  
[\_\_\_\_\_]\_\_\_\_\_  
Email: [suntersee@cloudingenuity.com](mailto:suntersee@cloudingenuity.com)  
Attn: Stephen Untersee

**Section 11.2 Entire Agreement.** DIR Contract DIR-CPO-4411, this Agreement and the Statements of Work associated herewith contain the entire agreement among the parties relating to the subject matter hereof, and all prior agreements relative hereto which are not contained herein are terminated.

**Section 11.3 Assignment.** shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 4.D.

**Section 11.4 Amendment and Modification; Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by both parties. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

**Section 11.5 Governing Law; Venue.** This Agreement will be governed by, and construed in accordance with shall be handled in accordance with Appendix A of DIR Contract DIR-CPO-4411, Section 4.F.

**Section 11.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original but all of which shall constitute but one document.

*(Signature page follows.)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last signature.

**Customer:**

\_\_\_\_\_

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

Name:

Title:

**Vendor:**

**Cloud Ingenuity, L.L.C.**, a Texas limited liability company

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]