



APPENDIX D-1 TO DIR CONTRACT NO. DIR-SDD-963

SECURITY ASSESSMENT SERVICES AGREEMENT

This Security Assessment Services Agreement (“Agreement”) dated this ___ day of _____, 200_ (“Effective Date”), covers all services acquired by the Customer identified below (“Customer”) from **Digital Defense, Inc.**, a Delaware corporation (“Provider”) through **Future Com, Ltd.** (“Reseller”) (collectively, “Parties”).

(1) **Structure of Agreement.** DIR Contract No. DIR-SDD-963, this Agreement, the executed Order Form(s) attached hereto as Exhibit(s) B, and other exhibits attached hereto as noted herein (collectively the “Agreement”) constitute the complete agreement regarding those services and replace any prior oral or written communications between the Parties. Additional terms are contained in the applicable Order Form(s). If there is a conflict between the terms of this Agreement and the terms of the attached exhibits, the terms of this Agreement prevail. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-963, the DIR Contract controls.

(2) **Security Assessment Services.** Provider will perform the services noted in the Order Form(s) and described in detail in Exhibit A hereof (“Services”) during the period and upon the terms and conditions specified in the Order Form. Any Party may request changes or additions to the Services. Any mutually agreed changes must be described in detail in writing and signed by all Parties.

(3) **Billing and Payment Terms.** Customer agrees to pay Reseller the price specified in the Order Form(s) for the corresponding Services, plus any pre-approved travel or other expenses noted in the Order Form(s). All pricing shall be in accordance with rates set forth in Section 4.B. of DIR Contract No. DIR-SDD-963. Payment shall be in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-963. Taxes shall be as per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

a. **Recurring Services.** Unless otherwise specified in the Order Form(s), Customer will make the initial payment for services upon execution of this Agreement. Invoicing and Payment shall be in accordance with Section 7. of Appendix A of the DIR Contract No. DIR-SDD-963. Customer acknowledges that Reseller is entitled to payment for unlimited vulnerability assessment services made available to Customer regardless of the number and frequency of vulnerability assessments scheduled for execution by Customer.

b. **One-Time Services.** Customer will pay for the services as specified in the Order Form(s), typically full payment upon execution of the Agreement or, for larger projects, 50% on execution and 50% upon completion of the Services.

(4) **Term and Termination.** This Agreement will become effective on the Effective Date and continue in effect until terminated as specified in the Order Form or this Section 4 (the “Term”) but no longer than four (4) years from the initial start date of the DIR Contract No. DIR-SDD-963. Termination shall be in accordance with Section 10.B. of Appendix A of the DIR Contract No. DIR-SDD-963.

(5) **Intellectual Property Rights.** Each Party agrees that it will acquire no right, title or interest in or to any other Party’s information, data, tools, processes or methods, or any copyrights, trademarks, service marks, trade secrets, patents or any other intellectual or intangible property or property rights of the other by virtue of the service provided or materials delivered pursuant to this Agreement. No Party will use another Party’s trademarks, service marks, trade names or product names other than as explicitly set forth in this Agreement. If Customer is granted the right to use any Provider or Reseller certification, seal or logo under the terms of the Order Form, it may do so only during the period specified in the Order Form and subject to the then-current guidelines for use of such certification, seal or logo.

(6) Representations and Warranties.

a. **Mutual.** Each Party represents and warrants to the others that it has the right to enter into this Agreement, and that the consent of no other person or entity is necessary for it to enter into and fully perform this Agreement.

b. **Limited Warranties of Provider.** Provider represents and warrants to Customer that:

i. All intrusions effected by Provider as part of the Services will be in accord with Provider’s written proposal (Exhibit A), and will be performed on devices to be specified in writing by Customer.

ii. All deliverables contemplated by this Agreement will meet the requirements described in this Agreement in all material respects.

iii. The Services will be performed in a workmanlike manner using reasonable care and skill by qualified personnel who are experienced in Provider’s methodology.

iv. The Services will be performed at a level of quality consistent with that provided by the mainstream of experts providing similar services on a commercial basis in the United States.

v. The Services will not cause to have introduced into Customer’s information systems and networks any self-replicating or non-self-replicating computer codes, commands, routines or like data or entries that perform an undesired activity (“Virus”).

c. **No Other Warranties.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES AND DELIVERABLES PROVIDED BY PROVIDER ARE PROVIDED “AS IS” AND PROVIDER AND RESELLER (1) DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND (2) DO NOT GUARANTEE THAT CUSTOMER’S NETWORK, COMPUTER SYSTEMS, OR ANY PORTIONS THEREOF ARE SECURE. CUSTOMER ACKNOWLEDGES THAT IMPENETRABLE SECURITY CANNOT BE ATTAINED IN REAL-WORLD ENVIRONMENTS AND THAT NEITHER PROVIDER NOR RESELLER GUARANTEES PROTECTION AGAINST BREACHES OF SECURITY.

d. **No Guarantee of Meeting Customer’s Needs.** Neither Provider nor Reseller has any way of determining Customer’s perceived needs, and therefore neither warrants that the Services will meet Customer’s needs.

e. **No Warranties to Third Parties.** No Party will make any warranties on behalf of another to any third party, without the prior written consent of the other Party.

(7) Indemnification.

a. **Mutual Indemnification.** To the extent authorized by Texas law and constitution, each Party to this Agreement and its “Related Parties” as defined below (“Indemnitor”) will indemnify, defend and hold harmless each other Party (“Indemnitee”) and its Related Parties from and against any “Loss” (defined below) asserted against or incurred by any of them, directly or indirectly, by reason of, arising out of or resulting from Indemnitor’s:

i. failure of to comply with any Legal Requirement pertaining to this Agreement or the services provided under it;

ii. criminal, fraudulent, intentionally wrongful or grossly negligent act or omission arising out of or resulting from the performance of its obligations under this Agreement;

iii. infringement, violation or misappropriation of Indemnitee's "Intellectual Property Rights" (defined below) arising out of or resulting from the performance of its obligations under this Agreement; or

iv. breach of any covenant or obligation contained in Section 11 (Confidential Information) of this Agreement.

As used in this Agreement, "Loss" means any demand, claim, suit, proceeding, action, loss, damage, judgment, award, settlement, cost, expense or liability, including without limitation, interest, defense costs, costs of investigation, court costs, reasonable attorneys' fees and expenses, penalties and fines.

As used in this Agreement, "Related Party" means any parent, subsidiary or affiliated company, and the present and former directors, officers, members, customers, shareholders, employees, agents, and representatives of any of these, and their successors, heirs and assigns.

As used in this Agreement, "Intellectual Property Rights" will mean and include: (i) all trademark rights, business identifiers, trade dress, service marks, trade names and brand names, all registrations thereof and applications therefore and all goodwill associated with the foregoing; (ii) all copyrights, copyright registrations and copyright applications, and all other rights associated with the foregoing and the underlying works of authorship; (iii) all patents and patent applications, and all international proprietary rights associated therewith; (iv) all contracts or agreements granting any right, title, license or privilege under the intellectual property rights of any third party; and (v) all inventions, mask works and mask work registrations, know-how, discoveries, improvements, designs, trade secrets, shop and royalty rights, employee covenants and agreements respecting intellectual property and non-competition and all other types of intellectual property.

b. Additional Indemnification by Customer. On the condition that Provider performs the Services in accordance with the terms of this Agreement (including the performance standards described in Section 6.b hereof), and excluding any action of Provider or Reseller as described in Section 7.a hereof, To the extent authorized by Texas law and constitution, Customer agrees to indemnify, defend and hold harmless Provider and Reseller and any of their Related Parties from and against any Loss asserted against or incurred by any of them arising out of or resulting from the performance of the Services by Provider in accordance with the terms of this Agreement, including any claims brought against Provider, Reseller and/or their Related Parties as a result of any damage caused or allegedly caused to Customer's computer systems or data as a result of the performance of the Services by Provider in accordance with the terms of this Agreement. **Notwithstanding any provision of this Section 7.b to the contrary, Provider remains obligated to indemnify Customer and its Related Parties from and against Losses pursuant to Section 7.a of this Agreement.**

c. Procedure for Indemnification.

i. **Notice and Defense of Third Party Claims.** The Indemnitee will give the Indemnitor prompt written notice of any third-party claim. The Indemnitor will undertake the defense thereof, and will be free to choose its own counsel. For State Agency Customers, all defense matters shall be coordinated by the Office of the Attorney General or the State of Texas. Failure to give the notice will not affect the Indemnitor's duties or obligations under this Section, except to the extent the Indemnitor is prejudiced thereby. So long as the Indemnitor is defending any claim actively and in good faith, the Indemnitee will not settle the claim. The Indemnitee will make available to the Indemnitor or its representatives all records and other materials required by them in

the possession or under the control of the Indemnitee, for Indemnitor's use in defending any claim, and will in other respects give reasonable cooperation in the defense. If the Indemnitor, within a reasonable time after notice of any third party claim, fails to defend the claim actively and in good faith, the Indemnitee will (upon further notice) have the right to undertake the defense, compromise or settlement of the claim or consent to the entry of a judgment with respect to the claim, on behalf of and for the account and risk of the Indemnitor, and the Indemnitor will thereafter have no right to challenge the Indemnitee's defense, compromise, settlement or consent to judgment.

ii. **Other Claims.** A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought.

d. Survival of Obligations; Payment. The indemnification obligations set forth herein will survive any termination of this Agreement. The Indemnitor will promptly pay the Indemnitee any amount due under this Section, which payment may be accomplished in whole or in part, at the option of the Indemnitee, by the Indemnitee setting off any amount owed to the Indemnitor by the Indemnitee.

(8) Limitation of Liability.

a. Scope of Indemnification Obligations.

i. **Unlimited.** The obligation of any Party to indemnify another Party and its Related Parties from and against Losses pursuant to the provisions of Section 7.a of this Agreement will be without limitation as to amount.

ii. **Multiple of Amounts Paid (Two Times).** To the extent authorized by Texas law and constitution, the obligation of Customer to indemnify Provider, Reseller and their Related Parties from and against Losses pursuant to the provisions of Section 7.b of this Agreement, will be limited to a maximum aggregate amount equal to the product of the sum of all amounts paid or to be paid pursuant to this Agreement by Customer to Reseller at any time during the Term, multiplied by two (2).

b. Generally. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, NONE OF THE PARTIES: (1) WILL BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS ATTRIBUTABLE TO ANY ACT, OMISSION OR MISREPRESENTATION BY SAID OTHER PARTY, ITS DIRECTORS, EMPLOYEES OR AGENTS; AND (2) WILL BE LIABLE TO ANOTHER, WHETHER A CLAIM BE IN TORT, CONTRACT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, LOST PROFIT, BUSINESS INTERRUPTION, LOSS OF DATA OR SIMILAR DAMAGES RELATING TO OR ARISING FROM THE SERVICES PROVIDED UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY RECEIVES NOTICE OF THE POTENTIAL FOR SUCH DAMAGES. THIS AGREEMENT ALLOCATES RISKS BETWEEN PROVIDER, RESELLER AND CUSTOMER, AND PROVIDER'S AND RESELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION.

(9) Customer's Consent to Network Intrusion and Waiver of Claims.

a. Some of the techniques Provider will employ in providing the Services would constitute improper and unauthorized access, absent the consent thereto given by Customer to Provider herein. Accordingly, on the condition that Provider performs the Services in accordance with the terms of this Agreement (including the provisions of Section 6.b hereof), Customer provides its consent to Provider's employment of such invasive and/or intrusive techniques as being part of the Services to be performed at Customer's request pursuant to this Agreement.

b. Customer acknowledges that, notwithstanding Provider's performance of the Services in accordance with the terms of this Agreement (including the provisions of Section 6.b hereof), Provider may inadvertently cause damage to Customer's System or data, including causing Customer's System to suffer degraded

performance or responsiveness. On the condition that Provider performs the Services in accordance with the terms of this Agreement (including the performance standards described in Section 6.b hereof), and excluding any action of Provider or Reseller as described in Section 7.a hereof, and to the extent authorized by Texas law and constitution, Customer agrees to waive any and all claims against Provider, Reseller and their Related Parties for any such damage, including damage that may be caused by Provider actually gaining access to such System.

c. Customer's conditional consent to Provider's actions and conditional waiver of claims are based on Customer's understanding of its own System as well as its understanding of the Services to be provided pursuant to this Agreement. Customer further warrants and represents that it has had the opportunity to question Provider and/or Reseller regarding the Services and the techniques involved in implementing the Services, and therefore agrees that its conditional consent and waiver constitute an informed conditional consent and waiver.

d. **Notwithstanding any provision of this Article 9 to the contrary, Provider remains obligated to indemnify Customer and its Related Parties from and against Losses pursuant to the provisions of Section 7.a of this Agreement.**

(10) Dispute Resolution. Dispute Resolution shall be in accordance with Section 10.A. of Appendix A of the DIR Contract No. DIR-SDD-963.

(11) Confidential Information. Each Party acknowledges that it and its employees or agents may, in the course of the Agreement, be exposed to or acquire information that is proprietary or confidential to the other Party.

To the extent consistent with the Texas Public Information Act, "Confidential Information" includes: (a) any information relating to a Party's research, development, trade secrets, processes, procedures, formulas, business practices, business plans, strategies, budgets, Customer and vendor relationships, personnel data, financial information and other similar business information of a confidential nature; (b) other proprietary information, results of remote assessments, technical guides, technical data or know-how, including, but not limited to, that which relates to Customer's hardware, software, screens, specifications, designs, plans, drawings, data, prototypes, discoveries, security policies, passwords, access codes and the like, router, firewall and other such equipment's configuration information, filtering configurations, or any other information directly relating to the integrity or security of the Customer network or computer systems; and (c) the methods, systems, data and materials used or provided by Provider in the performance of services pursuant to this Agreement. Provider and Reseller acknowledge and agree that the presence, nature and extent of any security vulnerabilities and other information that Provider and Reseller discover regarding Customer's information systems and networks during the course of this engagement is Confidential Information of Customer. Customer expressly permits Reseller to view the reports that Provider prepares for Customer as part of the Services, in order for Reseller to advise Customer and/or perform other related services for Customer, such as remediation services.

The term "Confidential Information" does not include information that is (a) known to the receiving Party prior to disclosure by the disclosing Party or its personnel; (b) publicly available through no act or omission of the receiving Party; (c) lawfully received by the receiving Party from a third party (other than the disclosing Party's former or current personnel) that is not under any confidentiality obligation to the disclosing Party; (d) comprised of statistical information, or other aggregated information regarding security vulnerabilities, security configurations and the like insofar as such information does not identify Customer or Customer's computer network or computer systems; or (e) is required to be disclosed pursuant to the Texas Public Information Act.

Except as otherwise expressly set forth herein, each Party will use Confidential Information of another Party which is disclosed to it only for the purposes of this Agreement and will not disclose such Confidential Information to any third party without the disclosing Party's prior written consent. Each Party may disclose to its employees another Party's Confidential Information on a need-to-know basis in connection

with this engagement. Each Party agrees to take measures to protect the confidentiality of the other Parties' Confidential Information that, in the aggregate, are no less protective than those measures it uses to protect the confidentiality of its own Confidential Information.

Upon the request of the disclosing Party, the recipient will return to the disclosing Party all written Confidential Information, and will promptly destroy all copies of any analyses, summaries or extracts prepared by the recipient or for its use containing or reflecting any Confidential Information, to the extent allowed under records retention laws and policies.

Each Party further agrees to promptly advise another Party in writing of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information of that other Party that may come to its attention and to take all steps reasonably requested by the disclosing Party to limit, restrict or otherwise remedy such misappropriation, disclosure or use.

Nothing in this Agreement will be construed as granting any rights to the receiving Party, by license or otherwise, to any of the disclosing Party's Confidential Information, except as expressly stated in this Agreement. In the event that a Party is required to disclose Confidential Information to a court or governmental agency or pursuant to any other applicable Legal Requirement, such Party will, to the extent practicable prior to such disclosure, and as soon as practicable and by the best available means, notify the other Party to allow it an adequate opportunity to object to the disclosure order or to take other actions to preserve the confidentiality of the information. Prior to any disclosure pursuant to this Section 11, a Party required to disclose Confidential Information will cooperate with the Party claiming confidentiality of the information in such Party's reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment.

(12) Ownership and Use of Work Product. Customer will own all deliverables and other material originated, prepared for and/or delivered to the Customer under this Agreement, including without limitation, all copyright, patent, trade secret and other proprietary rights pertaining thereto; provided, however, that Provider's working papers and Confidential Information of Provider and Reseller belong exclusively to Provider and Reseller, respectively, except to the extent said working papers contain Confidential Information of Customer or material owned by Customer under the preceding sentence. To the extent that Confidential Information of Provider is embedded or reflected in the deliverables provided hereunder, Provider hereby grants Customer the perpetual, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, distribute copies of, and prepare derivative works of Provider's Confidential Information and any derivative works thereof, and (2) authorize others to do any or all of the foregoing; provided, however, that said rights will be strictly limited to Customer's internal use related to detection, testing, intrusion, penetration, and remediation of security vulnerabilities in Customer's own information systems and networks. Except to the extent same include Confidential Information of Customer, the ideas, concepts, know-how, techniques, inventions, discoveries and improvements developed during the course of this Agreement by Provider's personnel, alone or in conjunction with Customer personnel, may be used by Provider in any way it deems appropriate, including without limitation by or for its Customers, without an obligation to account, notwithstanding any provision in this Agreement to the contrary. Nothing in this Agreement will preclude or limit Provider from providing consulting services and/or developing software or materials for itself or other Customers.

(13) General Provisions.

a. **Severability.** In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision will be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the Parties, and the remainder of the Agreement will remain in full force and effect.

b. **No Waiver.** No term or condition of this Agreement will be deemed waived, and no breach will be deemed excused, unless such waiver or excuse is in writing and is executed by the Party from whom such waiver or excuse is claimed.

c. **Amendment.** Any amendment of this Agreement will be in writing and signed by all Parties.

d. **Interpretation.** Section numbers and headings are used for convenience and are not to be construed as limitations of the substance of any provision.

e. **Governing Law.** This Agreement will be interpreted under the laws of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

f. **Force Majeure.** Force Majeure shall be in accordance with Section 10.C. of Appendix A of the DIR Contract No. DIR-SDD-963.

g. **Assignment.** Assignment shall be in accordance with Section 4.D. of Appendix A of the DIR Contract No. DIR-SDD-963.

h. **Injunctive Relief.** The Parties acknowledge that it will be impossible to measure in money the damage to them caused by any

failure to comply with the covenants set forth in Section 11 (Confidential Information), that each such covenant is material, and that in the event of any breach of such provision, the injured Party will not have an adequate remedy at law or in damages. Therefore, in addition to any other remedies to which a Party may be legally entitled, and to the extent authorized by Texas law and constitution, the Parties consent to the issuance of an injunction or the enforcement of other equitable remedies against them at the suit of the other, without bond or other security, to compel performance of all of the terms of Section 11 (Confidential Information).

i. **Counterparts; Facsimiles.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same document. The Parties may sign facsimile copies of this Agreement which will each be deemed originals.

Intending to be legally bound, the Parties have caused this Agreement to be executed by their authorized representatives effective as of the Effective Date.

Agreed to:

DIGITAL DEFENSE, INC.

FUTURE COM, LTD.

CUSTOMER

By: _____

By: _____

By: _____

Print Name: David G. Hargraves

Print Name: _____

Print Name: _____

Print Title: Vice President / CFO

Print Title: _____

Print Title: _____

Attachments:

Exhibit A – Description of Services (Proposal)

Exhibit B – Order Form



Exhibit A
PROPOSAL (SEE ATTACHED)



**EXHIBIT B
ORDER FORM**

Customer Name: _____
 Contract Commencement Date: _____
 Service Start Date (if different): (C) _____
 Initial Contract Term (months): 12 / 24 / 36
 Expiration Date: _____
 Main Point of Contact – Customer: _____ Tel. _____
 Primary Technical Contact – Customer: _____
 Customer Personnel Aware of Digital Defense’s Provision of Services (list below):

Service Products Contracted per this Agreement; circle choices and initial each in the appropriate boxes below:

Service Product	Contracted (Y if yes)	Term (months)	Due On Execution (B)	Due Monthly Thereafter (A) (B)
Vulnerability Assessment Services	Y / N	12 / 36	\$	\$
Penetration Testing Services	Y / N	12 / 36	\$	\$
RNA Right-to-Use Fee	Y	N/A	\$	\$
TOTAL DUE ON EXECUTION & MONTHLY				

Addressees for Notices:

<p><u>To Digital Defense:</u> Digital Defense, Inc. Attn.: President 1711 Citadel Plaza San Antonio, TX 78209 Fax: (210) 822-9216</p>	<p><u>To Future Com:</u> Future Com, Ltd. Attn: President 807 Forest Ridge, Suite 105 Bedford, TX 76022 Fax: (817) 510-1159</p>	<p><u>To Customer:</u> _____ Attn.: _____ _____ _____ Fax: _____</p>
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- A. Invoiced monthly or, at Customer’s option, paid via automatic bank draft or Electronic Funds Transfer (EFT). Invoicing shall be in accordance with Section 7.B. of Appendix A of the DIR Contract No. DIR-SDD-963.
- B. Pricing is at rates set forth in Section 4.B. of DIR Contract No. DIR-SDD-963 and is based upon information Customer has provided Digital Defense as to the number of nodes on Customer’s System. If the actual number of nodes (as determined by Digital Defense during testing) proves to be greater than the number supplied by Customer, Customer agrees to a pro-rata adjustment to the prices listed in this Exhibit B.
- C. Customer to note desired start date here. Digital Defense will be able to commence the first service 5-10 business days after receipt of (a) this Agreement, (b) payment of the “Due on Execution” amount noted above, which Customer will send to Value Added Reseller (VAR) with the signed Agreement, and (c) all pre-assessment questionnaire documentation and third-party service provider consents (if applicable).