

TRANSMITTAL

0150-11075-0000

TO
City CouncilDATE
3/27/18

COUNCIL FILE NO.

FROM
The MayorCOUNCIL DISTRICT
ALL**Proposed Professional Services Agreement with Genband US LLC for Voice Over Internet Protocol Telephone Services and Support to Legacy Nortel Phones throughout the City**

Transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a).

See City Administrative Officer report attached.

(Ana Guerrero) for


MAYOR



RHL:KDU:11180047ct

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 03-23-18	C.D. No. All	CAO File No.: 0150-11075-0000
Contracting Department/Bureau: Information Technology Agency		Contact: Anne Wu 213/978-0088; Laura Ito 213/978-3322	
Reference: Information Technology Agency transmittal dated January 22, 2018; referred by Mayor for report.			
Purpose of Contract: To provide Voice Over Internet Protocol (VOIP) telephone services and support to legacy Nortel phones throughout the City.			
Type of Contract: (x) New contract () Amendment		Contract Term Dates: February 1, 2018 – January 31, 2021, with two additional one-year options to renew.	
Contract/Amendment Amount: \$6,750,000			
Proposed amount \$6,750,000 + Prior award(s) \$0 = Total \$6,750,000			
Source of funds: General Funds budgeted within ITA's Communications Services Account No. 9350			
Name of Contractor: Genband US LLC			
Address: 3605 E. Plano Parkway, Plano, TX 75074			
	Yes	No	N/A
1. Council has approved the purpose	x*		
2. Appropriated funds are available	x*		
3. Charter Section 1022 findings completed			x
4. Proposals have been requested			x
5. Risk Management review completed	x		
6. Standard Provisions for City Contracts included	x		
7. Workforce that resides in the City: 0 %			
<p>* Council has approved the purpose and made appropriated funds available during the current fiscal year (2017-18). Ongoing VOIP implementation and further budget appropriations are subject to approval of future-year budgets.</p> <p>** Applicable to contracts of \$1,000,000 or more</p>			
Contractor has complied with:		Yes	No
8. Business Inclusion Program			x
9. Equal Benefits Ordinance			x
10. First Source Hiring Ordinance			x
11. Contractor Responsibility Ordinance		x	
12. Slavery Disclosure Ordinance		x	
13. Bidder Certification CEC Form 50		x	
14. Prohibited Contributors (Bidders) CEC Form 55		x	
15. CA Iran Contracting Act of 2010*		x	
16. Arizona Policy			x

RECOMMENDATIONS

1. That the Council approve, and authorize the General Manager of the Information Technology Agency (ITA), or designee, to execute, a personal services contract with Genband US, LLC, to provide Citywide telecommunications services for a three-year term of February 1, 2018 through January 31, 2021, with two one-year options to renew, and total compensation not to exceed \$6,750,000, in substantial conformance with the draft amendment attached to the ITA transmittal dated January 22, 2018, subject to the approval of the City Attorney as to form; and,
2. In the event of a change of name of the Contractor, or a change of control or ownership of the Contractor where the new owner is able to comply with and assume all Contract terms and conditions, authorize the General Manager of ITA, or designee, to execute an amendment to effect the ownership change and/or change the Contractor name for this contract, subject to the approval of the City Attorney as to form.

	
KDU Analyst	City Administrative Officer

COMMENTS

The Information Technology Agency requests approval to execute a Contract with Genband US, LLC (Genband) for the transition from traditional landline telephones to Voice Over Internet Protocol (VOIP) technology telephone services. The Contractor will also support and maintain the City's current Nortel landlines until they are phased out of use. ITA began this transition by installing VOIP in four Los Angeles Police Department (LAPD) Stations during 2017-18 (C.F. 17-0600 S101), with a goal of transitioning all City facilities requiring multiple phone line capacity away from the current telephone technology that will no longer be offered or supported by vendors in January 2020. The term of the Contract will be from February 1, 2018 through January 31, 2021, with two additional one-year options to renew, for a total potential term of up to five years. ITA also requests to amend the Contract without further Mayor and Council approval in the event of a future change of control or ownership of Genband.

Background and Funding

ITA states that continuing to perform maintenance on the City's existing traditional landlines is impractical, and that their maintenance staff have needed to purchase replacement equipment for antiquated lines on eBay in order to make repairs. The work to be undertaken by Genband includes transitioning selected City facilities to VOIP services, installing network upgrades, and providing new VOIP handsets. The 2017-18 Unappropriated Balance provided \$684,000 to install and configure VOIP in the Granada Hills, Devonshire, Van Nuys and Foothill LAPD Stations and provide user training (C.F. 17-0600 S101). These funds were transferred to ITA in September 2017. Replacement was initiated in these stations in order to address a series of outages that occurred in February 2017 where non-emergency calls were not being received. ITA has indicated that it will request additional funding to continue the transition to VOIP during the 2018-19 budget process. It should be noted that the amount of the maximum contractual obligation proposed in ITA's January 22, 2018 transmittal has been reduced in this report, with ITA's concurrence, to reflect the likelihood that the original \$22.5 million five-year VOIP budget will not be needed in full due to the City's proposed transition to mobile phones for many devices previously anticipated to use VOIP (C.F. 18-0143). ITA has adjusted the Contract language to reflect the \$6,750,000 maximum expenditure (see Page 3, Section III, of the revised proposed Contract, attached).

ITA will pay for the Contract using funds within its Communications Services Account. While the Contract ceiling requested is \$6.75 million, the City is not obligated to pay the entire amount. Pursuant to Section III.A. of the attached proposed Contract, execution of the Contract does not guarantee that any or all funds will be expended and payment is subject to funding appropriated by the Council for the Contract's purpose. The number of VOIP-compatible phones to be installed Citywide and the amount of funding to be appropriated for this purpose is an ongoing budget and policy issue.

ITA requests that its General Manager be given the authority to execute future amendments to the Contract without subsequent Mayor and/or Council authority only a) in the event of a company name change, and b) if the new company agrees to the preceding contract's terms and conditions. Any such amendments would continue to be subject to compliance with the City's contracting requirements and the approval of the City Attorney as to form.

Compliance with Contracting Requirements

According to ITA, Genband has complied with all applicable City contracting requirements, policies and procedures. ITA indicates that the Contractor was selected without a competitive process because Genband has proprietary rights to the source code for Nortel phones and therefore solely possesses an expertise that is required to maintain compatibility with the City's Nortel phones. The Contractor received an exemption from the First Source Hiring Ordinance (FSHO) requirement pursuant to the Rules and Regulations Implementing the FSHO delineated in Section 10.44 of the Los Angeles Administrative Code because the contracted services are available only from a single source. Proposals were not requested and therefore the Business Inclusion Program outreach was not conducted. The Contractor also received an exemption from the Equal Benefits Ordinance because the Contract is for necessary services that are available only from a single prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the City (Los Angeles Administrative Code Section 10.8.2.1). Charter Section 1022 does not apply to the Contract as there is no defined labor component to the Contract. Finally, in accordance with Administrative Code Section 10.5(b), Council approval is required for this Amendment because the Contract potentially obligates the City to make payments to a period of longer than three years.

FISCAL IMPACT STATEMENT

Funding for this Contract is available in the Information Technology Agency's 2017-18 Adopted Budget, Fund No. 100, Communications Services Account 9350 for this purpose. There is no additional impact to the General Fund. The recommendations in this report comply with the City's Financial Policies in that budgeted funds will be used to support the proposed expenditures, and these expenditures are limited to the appropriation of funds in current and future-year budgets.

CONTRACT

between

CITY OF LOS ANGELES

and

GENBAND US LLC

THIS Contract ("Contract" or "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (herein referred to as "City"), and GENBAND US LLC (a Delaware limited liability company hereinafter referred to as "Contractor") providing the products and services, with reference to the following:

WITNESSETH:

WHEREAS, the City of Los Angeles, through its Information Technology Agency ("ITA"), is responsible for providing select telecommunication services to all City departments; and

WHEREAS, the City offices require voice, data, video services, local and long distance and network based services; and

WHEREAS, the City possesses over 25,000 Nortel phones in use in all Council-controlled departments, 7,500 of which are compatible with Voice-over-Internet-Protocol ("VoIP") technology; and

WHEREAS, the City intends to move from current "legacy" technology to VoIP technology by 2020 and desires to continue using the 7,500 Nortel VoIP compatible phones; and

WHEREAS, Nortel, the company that manufactured the phones no longer provides source coding support service for legacy Nortel phones; and

WHEREAS, Contractor possesses certain proprietary rights and source code with the technical ability to interface with such Nortel phones; and

WHEREAS, the City needs to move from current "legacy" technology to VoIP technology by 2020; and the City has deployed 7500 Nortel IP phones, and would like to continue using existing Nortel IP phones. Contractor support legacy Nortel IP phones using its Experius and Kandy Business Solutions (KBS) (formerly NUViA) platform; and

WHEREAS, the City and Contractor have mutually agreed to provide select telecommunication and information services; and

WHEREAS, the City represents that competitive bidding under Charter Section 371 is not required because the services required are for the performance of special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous; and

WHEREAS, in accordance with Charter Section 372, the City further represents that obtaining competitive proposals or bids for this Contract is not reasonably practicable or compatible with the City's interests since the Contractor owns certain proprietary rights necessary to interface with the City's Nortel VoIP phones; and

WHEREAS, pursuant to Los Angeles City Charter Section 1022, it was determined that City employees do not have the expertise to perform the work for this utility contract; and

WHEREAS, it is deemed that the service is both necessary and in the best interest of the City.

WHEREAS, the execution of this agreement is authorized by the City Council.

NOW, THEREFORE, in consideration of the above premises and of the covenants and agreements hereafter set forth, the parties hereby covenant and agree as follows:

I. TERM OF CONTRACT

The term of this Contract shall commence upon the date attested by the City Clerk and shall terminate three (3) years there from, or at such time as all funding set forth in Section III.A has been expended, whichever occurs first, with two (2) options to extend the term of this agreement for an additional year for each option exercised. The ITA General Manager or designee and Contractor shall exercise each option upon mutual agreement via written notification to Contractor sixty (60) days prior to the termination of this agreement. This Contract shall be subject to termination by the City if funds are not appropriated for these services in the ensuing fiscal year commencing July 1.

II. STATEMENT OF WORK

Contractor shall agree to perform the services required by the City consistent with the terms and conditions set forth in this Contract, including the Appendices which are entered into by mutual agreement and incorporated into this Contract.

Specific utility services and products for this Contract are listed in Appendix B. The parties to this Contract may mutually agree to add, delete or modify items listed in Appendix B without going through a contract amendment process so long as the addition, deletion or modification does not materially affect the scope of work under this Contract. Contractor shall also provide the services as set

forth in Appendix C (Service Level Agreement) for the Contractor products and Contractor services provided under this Contract as described in Appendix C (i.e., no third party products or services including, but not necessarily limited to, Voice Services).

Contractor understands that the City may have, or may subsequently enter into, other contracts with vendors for identical or similar services. Therefore Contractor agrees that this Contract does not grant an exclusive right to Contractor to provide all services set forth in this Agreement or in Appendix B. Only specific technology descriptors (services) as set forth herein will be allowed for purchase under this Contract

Contractor agrees that license(s) purchased under this Contract irrespective of when the purchases were made, must have the start date when the license(s) was/were activated in the Contractor's portal by City personnel.

Before any products or services are provided under this Contract, Contractor must first receive written approval to proceed by the Information Technology Agency (ITA) via a Sub Authority for Expenditure (SAFE) issued to Contractor for the applicable services.

Except as provided in Appendix D, Contractor shall not disclose the City's confidential information to any third party unless specifically authorized in writing by the City.

III. COMPENSATION AND METHOD OF PAYMENT

A. Total Contract Expenditure

The total expenditure by the City under this Contract on an annual basis shall not exceed \$1,350,000, and in the aggregate the expenditures under this Contract shall not exceed \$6,750,000 (Six Million, Seven Hundred and Fifty Thousand Dollars) during the term of this Contract.

Notwithstanding anything to the contrary, (i) City's obligations hereunder are payable only from funds specifically appropriated by the City Council; and (ii) City shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of City's future fiscal years unless and until the City Council appropriates funds for this Contract in City's budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of the last day of the last fiscal year for which funds were appropriated. City will make a good faith effort to notify Contractor in writing of any such non-appropriation of funds at the earliest possible date.

The Contractor further understands and agrees that execution of this Contract does not guarantee that any or all funds will be expended.

B. Invoices

Contractor shall submit monthly invoices to the City as follows:

Payment of invoices shall be subject to approval by the City. No payment shall be made for any incidental expense.

Contractor's invoices must conform to City standards and include, at a minimum, the following information:

1. Name and address of Contractor;
2. Name and address of the City department being billed;
3. Date of the invoice and the period covered;
4. Reference to this Contract number;
5. Reference to the ITA Written Approval (i.e., Sub Authority for Expenditure [SAFE]) authorizing the work performed by Contractor;
6. Description of the services performed and the amount due for the services;
7. Payment terms, total due and due date;
8. Remittance Address (if different from Contractor's address);
9. City's SAFE number
10. A copy of original invoice showing the actual cost of the material provided if any.

All invoices shall be submitted on Contractor's letterhead, contain Contractor's official logo, or contain other unique and identifying information such as name and address of Contractor. Invoices shall be submitted within 30 days of performance of services unless otherwise specified in Appendix D or E. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City Project Manager. The provisions of Section 8 of Appendix D, and Section 4 of Appendix E are hereby incorporated into this section.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of Contractor. The City will not compensate Contractor for any costs incurred for invoice preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate charges on invoices at any time.

Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and approve demands before they are drawn on the Treasury.

IV. CONTRACT REPRESENTATIVES

The following representative individuals and addresses shall serve as the place to which notices and other correspondence between the parties shall be sent. The City and Contractor shall notify, in writing, the other party of any changes in the information.

A. Contractor Representative

Contractor hereby appoints the following person to represent Contractor with respect to all business matters pertaining to this Contract.

Name: Duc Do
Title: VP, NA Strategic Accounts & Alliances, KANDY
Address: 3605 E. Plano Parkway
Plano, TX 75074
Telephone: (951)907-9377
E-Mail: duc.do@genband.com

Legal notices, demands and communications should be directed to the following:

Name: Heather Pollard
Title: Paralegal
Address: 3605 E. Plano Parkway
Plano, TX 75074
Telephone: (972)461-7631
E-Mail: heather.pollard@rbbn.com

All payment and invoicing issues should be directed to the following:

Name: Jason Waligura
Title: Credit and Collections Manager
Address: 3605 E. Plano Parkway
Plano, TX 75074
Telephone: (972)521-5811
E-Mail: jason.waligura@genband.com

B. City's Representative

The City hereby appoints the following person, or her designated representative, to represent the City in all matters pertaining to this Contract.

Name: Laura Ito
Title: Director of Finance and Administration
Address: 200 North Main Street, Room 1400
Los Angeles, CA 90012
Telephone: (213)978-3322
E-mail: laura.ito@lacity.org

C. City's Project Manager

The CITY hereby appoints the following person to act as the Project Manager.

Name: Anne Wu
Title: Director of Communication Services
Address: 200 N. Main Street, Room 1300
Los Angeles, CA 90012
Telephone: (213)978-0088
E-mail: anne.wu@lacity.org

Formal notices, demands and communications from Contractor shall be given to the City's Representative with copies to the City's Project Manager.

Formal notices, demands and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accordance with this Section, within five (5) working days of said change.

V. CONTRACT AUDIT AND RECORDS

The City or its delegates will have access to monthly service bills via an agreed upon standard billing statements as well as where provided for in Appendix D and E.

Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized City

Personnel or by the City's representative at any time during the term of this Contract or within the three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. Contractor shall provide any reports requested by the City regarding performance of this Contract.

VI. CONTRACTOR PERFORMANCE EVALUATION

At the end of this Contract, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of Contractor's performance during the term of the Contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or services performed, the timeliness of performance, financial issues, and the expertise of personnel that Contractor assigns to the Contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City Evaluation and allowed 30 calendar days to respond. The City will use the final City evaluation, and any response from Contractor, to evaluate proposals and to conduct reference checks when awarding other personal services contracts.

VII. GENERAL CITY PROVISIONS

A. Non-Discrimination

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The Contractor shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City. In performing this Contract, Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

B. Equal Employment Practices

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

1. During the performance of this Contract, the Contractor agrees and represents that it will provide equal employment practices and the Contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to, or because of, race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - a. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - c. The Contractor agrees to post a copy of its Equal Employment Opportunity policy in conspicuous places at its place of business available to employees and applicants for employment.
2. The Contractor will, in all solicitations or advertisements for employees placed by, or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
3. As part of this City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, Contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
4. The Contractor shall permit access to, and may be required to provide certified copies of, all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City contracts. On their or either of their request, the Contractor shall provide evidence that he or she has or will comply therewith.
5. The failure of any Contractor to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of City contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract

Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

6. Upon a finding duly made that the Contractor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to, and retained by, the City. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, the Contractor shall be disqualified from being awarded a Contract with the City for a period of two years, or until the Contractor shall establish and carry out a program in conformance with the provisions hereof.
7. Notwithstanding any other provision of this Contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
8. [Intentionally Blank]
9. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
10. Contractor agrees to adhere to the Equal Employment Practices specified herein during the performance of this Contract.
11. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - a. Hiring practices;
 - b. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - c. Training and promotional opportunities; and
 - d. Reasonable accommodations for persons with disabilities.
12. Any subcontract entered into by Contractor to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Contractor to comply with this requirement or to

obtain the compliance of its subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of this Contract.

C. Affirmative Action Program

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time:

1. During the performance of this Contract, the Contractor certifies and represents that Contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - a. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - c. The Contractor shall post a copy of its Equal Employment Opportunity policy in conspicuous places at its place of business available to employees and applicants for employment.
2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
3. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, or medical condition.
4. The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its

employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request, to provide evidence that it has or will comply therewith.

5. Contractor's failure to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of this Contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.
6. Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Office of Contract Compliance that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
7. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the City's Board of Public Works, or any court of competent jurisdiction, finds that the Contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or of the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to Contractor by the City under the contract, a penalty of \$10.00 for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
8. Notwithstanding any other provisions of this Contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
9. [Intentionally Blank]
10. Nothing contained in this Contract shall be construed in any manner so

as to require or permit any act which is prohibited by law.

11. Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this section at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, Contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from the expiration, Contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - a. Every contract of \$5,000 or more which may provide construction demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - b. Contractor may establish and adopt as its own affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
12. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Contractor.
13. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

- a. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - b. Classroom preparation for the job when not apprenticeable;
 - c. Pre-apprenticeship education and preparation;
 - d. Upgrading training and opportunities;
 - e. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 - f. The entry of qualified women, minority and all other journeymen into the industry; and
 - g. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
14. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Contract Compliance Action Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
15. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
16. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the

contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the contractor's contract with the City.

D. Child Support Assignment Orders

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that Contractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that Contractor will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of Contractor to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to obtain compliance of its subcontractors shall constitute a default by Contractor under this contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Contractor certifies that, to the best of its knowledge, it is fully complying with the Earning Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

E. Americans with Disabilities Act

Contractor hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and its implementing regulations. Contractor will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. Contractor will not discriminate against

persons with disabilities nor against persons due to their relationship to or associations with a person with a disability. Any subcontract entered into by Contractor, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

F. Contractor Responsibility Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. Contractor further agrees to: (1) notify the City within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that Contractor is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the City within thirty calendar days of all findings by a government agency or court of competent jurisdiction that Contractor has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the City; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the City within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

G. Slavery Disclosure Ordinance

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. Contractor certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract

H. Iranian Contracting Act, 2010

In accordance with California Public Contract Code Sections 2200 – 2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign and submit the “Iran Contracting Act of 2010 Compliance Affidavit.”

I. Equal Benefits Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, Contractor certifies and represents that Contractor will comply with the EBO.
- B. The failure of Contractor to comply with the EBO will be deemed to be a material breach of this Contract by the City.
- C. If Contractor fails to comply with the EBO the City may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the City's Designated Administrative Agency determines that a Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Contract. Violation of this provision may be used as evidence against Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922.”

VIII. MISCELLANEOUS

- A. Current Los Angeles City Business Tax Registration Certificate Required

If applicable, Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

B. Compliance with Los Angeles City Charter Section 470(c) (12)

The Contractor, its subcontractors, and their principals are obligated to fully comply with City of Los Angeles Charter Section 470 (c) (12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor subject to Charter Section 470 (c) (12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Contract:

"Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions.

"As provided in Charter Section 470(c) (12) and related ordinances, you are a subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470 (c) (12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to Contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Contractor within 5 business days. Failure to comply may result in termination of the contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213.978.1960."

Contractor, its subcontractors, and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all remedies available at law.

C. Insurance

During the term of this Contract and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own

expense a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Appendix A hereto), covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Appendix A hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. Contractor shall comply with all Insurance Contractual Requirements shown on Appendix A hereto. Appendix A is hereby incorporated by reference and made a part of this Contract.

D. Excusable Delays

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

E. Termination

1. Termination for Convenience

The City may terminate this Contract for the City's convenience at any time by giving Contractor thirty days written notice thereof. Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The City shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary underlying commitment costs incurred by Contractor to affect such termination, such underlying commitment costs to only be those costs which are directly related and result from such termination. Thereafter, Contractor shall have no further claims against the City under this Contract. All finished and unfinished documents and materials (excluding Contractor's Software which is licensed and not sold) which comprises Work Product under this Contract, including all intellectual property rights created under this Contract unless otherwise provided for pursuant to Appendix D or E

shall become City property upon the date of such termination Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

2. Termination For Breach of Contract

Except as otherwise provided for in Appendix D and/or E:

- a. Except for excusable delays as provided in Section VIII. D. Excusable Delays, if Contractor fails to perform any of the material provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within a reasonable time period permitted by the City, then the City may terminate this Contract due to Contractor's breach of this Contract.
- b. If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this Contract.
- c. If Contractor engages in any dishonest conduct related to the performance or administration of this Contract or violates the City's lobbying policies, then the City may immediately terminate this Contract.
- d. In the event the City terminates this Contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited, any excess costs for such services.
- e. All finished or unfinished documents and materials produced or procured under this Contract (excluding Contractor's Software which is licensed and not sold) which comprises Work Product under this Contract, including all intellectual property rights created under this Contract unless otherwise provided for pursuant to Appendix D or E, shall become City property upon date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

- f. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section VIII. E.I. Termination for Convenience.
- g. The rights and remedies of the City and the Contractor provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

F. INDEMNIFICATION

Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. As a condition thereof, the City shall give Contractor prompt written notice of such suits, claims, allegations and other matters for which indemnification is applicable, tender the defense thereof to Contractor and render reasonable assistance thereto (at Contractor's expense). Contractor's defense of such suits, claims and allegations and any settlement thereof shall not impose any additional obligations on the City nor prejudice its rights with respect to Contractor's indemnification obligations unless expressly agreed to in writing by the City. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of this section shall survive expiration or termination of this Contract.

G. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the City, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but

not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by Contractor, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Work Product furnished by Contractor, or its subcontractors of any tier, under the Agreement. As a condition thereof, the City shall give Contractor prompt written notice of such suits, claims, allegations and other matters for which indemnification is applicable, tender the defense thereof to Contractor and render reasonable assistance thereto (at Contractor's expense). Contractor's defense of such suits, claims and allegations and any settlement thereof shall not impose any additional obligations on the City nor prejudice its rights with respect to Contractor's indemnification obligations unless expressly agreed to in writing by the City. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of this section shall survive expiration or termination of this Contract.

H. INTELLECTUAL PROPERTY WARRANTY

Contractor represents and warrants that its performance of all obligation under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information. In the event of Contractor's breach of such warranty, the respective obligations, rights and remedies with respect thereto shall be as set forth in Paragraph G (INTELLECTUAL PROPERTY INDEMNIFICATION) set forth above.

I. LIMITATION OF LIABILITY

IN NO EVENT WILL THE, AGGREGATE LIABILITY OF CONTRACTOR WITH RESPECT TO (A) INABILITY OF THE SERVICES TO FUNCTION PROPERLY AS A RESULT OF ELECTRONIC AND/OR CYBERNETWORK EVENTS, AND (B) BREACHES OF ELECTRONIC SYSTEMS AND DAMAGES RESULTING FROM SUCH BREACHES AFFECTING PERSONAL DATA AND/OR CUSTOMER DATA EXCEED TWENTY-TWO MILLION FIVE-HUNDRED THOUSAND U.S. DOLLARS (USD\$22,500,000.00). THE FOREGOING LIMITATION SHALL NOT APPLY TO THE OBLIGATIONS OF INDEMNIFICATION AS SET FORTH IN

SECTIONS F AND G, ABOVE, EXCEPT TO THE EXTENT THAT SUCH INDEMNIFICATION OBLIGATIONS PERTAIN TO THIRD PARTIES ALLEGATIONS OR CLAIMS FOR DAMAGES ARISING OUT OF THE CONDITIONS SET FORTH IN (A) AND (B) IN THE PRECEEDING SENTENCE, IN WHICH CASE THE AFOREMENTIONED LIMITATION SHALL APPLY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE AND SUCH LIMITATION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT OR PORTIONS THEREOF. FOR GREATER CERTAINTY, THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY RELATED TO PERSONAL INJURY OR PROPERTY DAMAGE, INCLUDING INDEMNIFICATION OBLIGATIONS RELATED TO PERSONAL INJURY OR PROPERTY DAMAGE.

J. OWNERSHIP AND LICENSE

All Work Products originated and prepared by Contractor or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the City for its use in any manner it deems appropriate. Work Products subject to the requirements set forth below shall mean all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property ("IP materials"). Notwithstanding the foregoing, ordinary activities of Contractor in performance of this Contract and not involving the development of IP materials particular to the City shall not be deemed to create Work Products and, accordingly, Contractor will not create any Work Product under this Contract unless expressly requested to do so by the City and documented in an Appendix hereto. To the extent that the foregoing provisions apply, Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this Contract and Contractor further agrees to execute any documents necessary for the City to perfect, memorialize, or record City's ownership or rights provided herein.

Contractor shall not provide or disclose any Work Product to any third party without prior written consent of the City.

Any subcontract entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be

performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the City's ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

K. RATIFICATION CLAUSE

Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services prior to the execution of this Contract. To the extent that said services were performed in accordance with the terms and conditions of this Contract, those services are hereby ratified.

L. OWNERSHIP CHANGE OR NAME CHANGE

In the event of a change of name of the Contractor or a change of control or ownership of the Contractor where the new owner is able to comply with and assume all Contract terms and conditions, the General Manager of ITA may, at his discretion, execute an amendment to effect the assumption and/or change the Contractor name for this Contract. Notwithstanding the foregoing, if the Contractor divests a material portion of its business or assets thereof which relate to the services, Contractor may assign this Contract. The City acknowledges that Contractor is engaged in a contingent merger activity with Sonus Networks, Inc. and hereby consents to the assumption of this Contract by Sonus Networks, Inc., Ribbon Communications, or the applicable controlling entity following such merger.

M. CONTRACT MODIFICATIONS, CHANGES OR AMENDMENTS

This Contract which consists of this Contract, plus Appendices A, B C, D and E, constitutes the entire Contract between the City and Contractor. The parties may mutually agree to add, delete or modify Appendix B (part number, description, MSRP, discount and/or unit cost). For any modification to Appendix B that is within the scope of this Contract, the Contractor shall prepare a revised Appendix B for review and approval by the City's Project Manager. In the event that an agreement is reached, both the City's Project Manager and a duly authorized representative of the Contractor shall sign and date the revised Appendix B without further action by the Office of the Mayor. All other amendments to this Contract shall be in writing and signed,

duly authorized and approved by all City representative required to enter into contracts on behalf of the City.

N. APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, Contractor and the City consent to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

O. BREACH AND WAIVER

Except for excusable delays as previously described in this Agreement, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

P. PERMITS

Contractor and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for Contractor's performance hereunder and shall pay any fees required therefor. Contractor certifies to immediately notify the City of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

Q. FALSE CLAIMS ACT

Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

VIII. ORDER OF PRECEDENCE

The following appendices are hereby incorporated into and made a part of this Contract where referred to as though set forth at length. In the event of an inconsistency between any of the provisions of this Contract and/or Appendices attached hereto, the inconsistency shall be resolved by giving precedence in the following order:

Contract

Appendix A: Required Insurance and Minimum Limits (Form Gen. 146, Rev. 9/06).

Appendix B: GENBAND KBS Catalog

Appendix C: GENBAND KBS Service Level Agreement

Appendix D: KANDY Subscription Services

Appendix E: Voice Services

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed by their respective duly authorized officers:

APPROVED AS TO FORM:
Michael N. Feuer City Attorney

CITY OF LOS ANGELES

By: _____
Steven H. Hong
Deputy City Attorney III

Laura Ito
Assistant General Manager
Information Technology Agency

Date: _____

Date: _____

ATTEST: Holly Wolcott,
City Clerk

GENBAND US LLC

By: _____

Signature

Date: _____

Printed Name

Title

Date

TED M. ROSS
GENERAL MANAGER
CHIEF INFORMATION OFFICER

JOYCE J. EDSON
ASSISTANT GENERAL MANAGER

JEANNE M. HOLM
ASSISTANT GENERAL MANAGER

ANTHONY MOORE
ASSISTANT GENERAL MANAGER

LAURA ITO
ASSISTANT GENERAL MANAGER

CITY OF LOS ANGELES

CALIFORNIA



ERIC GARCETTI
MAYOR

INFORMATION TECHNOLOGY AGENCY

ROOM 1400, CITY HALL EAST
200 NORTH MAIN STREET
LOS ANGELES, CA 90012
(213) 978-3311
FAX (213) 978-3310

ITA.LACITY.ORG

January 22, 2018

REF: FAS-016-18

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

Subject: **REQUEST FOR PERSONAL SERVICES CONTRACT – CITYWIDE
TELECOMMUNICATION SERVICES WITH GENBAND US LLC.**

Attached for your review and approval is a draft personal services contract for citywide voice, data, video services, local and long distance and network based telecommunication services with GENBAND US LLC.

Background

The City of Los Angeles Information Technology Agency (ITA) currently possess and use over 25,000 Nortel phones in all Council-controlled departments, 7,500 of which are compatible with Voice over Internet Protocol (VoIP) technology. The City intends to move from current "legacy" (landline) technology to VoIP technology by 2020 and desires to continue using the 7,500 Nortel VoIP compatible phones. However, Nortel, the company that manufactured the phones no longer provides source coding support service for the legacy Nortel phones. GENBAND US LLC has proprietary rights to the source code for Nortel phones and supports legacy Nortel VoIP phones using its Experius and Nuvia platform.

Therefore, the City has determined that this vendor is the sole source provider of Source Coding that will enable the City to avoid purchasing 7,500 replacement handsets to be used in the VOIP phone implementations.

Since there is no labor component within this utility contract, the Personnel Department stated that the Charter Section 1022 determination process was not required.

The term of this contract will be for three years, with two options to extend the term of the contract for an additional year for each option exercised.

The draft contract has been reviewed by the City Attorney as to form.

GENBAND received an exemption from the FSHO requirement based on L.A. Administrative Code 10.44.9(6) – single source.

A waiver from the Equal Benefits Ordinance requirement was approved by OCC on 8/31/17 based on L.A. Administrative Code section 10.8.2.1(i)(1)(b) – single prospective contractor.

OCC approved non-coverage/exemption from LWO requirement because the contract fails to satisfy the definition of a service contract – utility service cannot be performed by city employees and contractor employees are not expected to render any service on city-owned property.

GENBAND LLC US has completed the Iran Contracting Act of 2010 form.

The Contractor Responsibility Questionnaire was filed and verified by the Authorized DAA Representative in Public Works on 11/22/17.

The Bidder Certification CEC form 50 was completed by the vendor.

The Ethics CEC form 55 was completed by the vendor and filed with the Ethics Commission on September 21, 2017.

The company's insurance agent has uploaded the ACORD certificate to meet the Risk Manager's minimum insurance requirement for General, Workers' Compensation, Auto, Cyber and Professional liability. (CA # 124545, expires 5/28/18).

The headquarters address and workforce information is as follows:

3605 East Plano Parkway
Plano, Texas 75074

% of Workforce Residing in the City: 0%

The vendor possesses a valid Business Tax Registration Certificate.

Fiscal Impact

The total expenditure by the City under this Contract on an annual basis shall not exceed \$4,500,000, and in the aggregate the expenditure under this Contract shall not exceed \$22,500,000 (Twenty two million five hundred thousand dollars) during the term of this Contract.

This funding is included in the Communications Services Account (9350) of the ITA's budget.

Honorable Eric Garcetti
January 22, 2017
Page 3

Recommendation

That a) the General Manager of the Information Technology Agency or his designee be authorized to execute a contract with GENBAND US LLC for three years from the date attested by the City Clerk and be allowed to approve two (2) one-year extensions; and b) in the event of a change of name of the Contractor or a change of control or ownership of the Contractor where the new owner is able to comply with and assume all Contract terms and conditions, the General Manager of ITA may, at his discretion, execute an amendment to effect the assumption and/or change the Contractor name for this Contract.

Please contact Laura Ito, Assistant General Manager at (213) 978-3322 with any questions.

Respectfully Submitted,

Ted Ross
General Manager

Attachment

ec: Trina Unzicker, CAO
Anne Wu, ITA
Irene Mayeda, ITA
Sandra Lopez, ITA

CONTRACT

between

CITY OF LOS ANGELES

and

GENBAND US LLC

THIS Contract ("Contract" or "Agreement") is made and entered into by and between the City of Los Angeles, a municipal corporation (herein referred to as "City"), and GENBAND US LLC (a Delaware limited liability company hereinafter referred to as "Contractor") providing the products and services, with reference to the following:

WITNESSETH:

WHEREAS, the City of Los Angeles, through its Information Technology Agency ("ITA"), is responsible for providing select telecommunication services to all City departments; and

WHEREAS, the City offices require voice, data, video services, local and long distance and network based services; and

WHEREAS, the City possesses over 25,000 Nortel phones in use in all Council-controlled departments, 7,500 of which are compatible with Voice-over-Internet-Protocol ("VoIP") technology; and

WHEREAS, the City intends to move from current "legacy" technology to VoIP technology by 2020 and desires to continue using the 7,500 Nortel VoIP compatible phones; and

WHEREAS, Nortel, the company that manufactured the phones no longer provides source coding support service for legacy Nortel phones; and

WHEREAS, Contractor possesses certain proprietary rights and source code with the technical ability to interface with such Nortel phones; and

WHEREAS, the City needs to move from current "legacy" technology to VoIP technology by 2020; and the City has deployed 7500 Nortel IP phones, and would like to continue using existing Nortel IP phones. Contractor support legacy Nortel IP phones using its Experius and Kandy Business Solutions (KBS) (formerly NUViA) platform; and

WHEREAS, the City and Contractor have mutually agreed to provide select telecommunication and information services; and

WHEREAS, the City represents that competitive bidding under Charter Section 371 is not required because the services required are for the performance of special services of a temporary and occasional character for which competitive bidding is not practicable or advantageous; and

WHEREAS, in accordance with Charter Section 372, the City further represents that obtaining competitive proposals or bids for this Contract is not reasonably practicable or compatible with the City's interests since the Contractor owns certain proprietary rights necessary to interface with the City's Nortel VoIP phones; and

WHEREAS, pursuant to Los Angeles City Charter Section 1022, it was determined that City employees do not have the expertise to perform the work for this utility contract; and

WHEREAS, it is deemed that the service is both necessary and in the best interest of the City.

WHEREAS, the execution of this agreement is authorized by the City Council.

NOW, THEREFORE, in consideration of the above premises and of the covenants and agreements hereafter set forth, the parties hereby covenant and agree as follows:

I. TERM OF CONTRACT

The term of this Contract shall commence upon the date attested by the City Clerk and shall terminate three (3) years there from, or at such time as all funding set forth in Section III.A has been expended, whichever occurs first, with two (2) options to extend the term of this agreement for an additional year for each option exercised. The ITA General Manager or designee and Contractor shall exercise each option upon mutual agreement via written notification to Contractor sixty (60) days prior to the termination of this agreement. This Contract shall be subject to termination by the City if funds are not appropriated for these services in the ensuing fiscal year commencing July 1.

II. STATEMENT OF WORK

Contractor shall agree to perform the services required by the City consistent with the terms and conditions set forth in this Contract, including the Appendices which are entered into by mutual agreement and incorporated into this Contract.

Specific utility services and products for this Contract are listed in Appendix B. The parties to this Contract may mutually agree to add, delete or modify items listed in Appendix B without going through a contract amendment process so long as the addition, deletion or modification does not materially affect the scope of work under this Contract. Contractor shall also provide the services as set

forth in Appendix C (Service Level Agreement) for the Contractor products and Contractor services provided under this Contract as described in Appendix C (i.e., no third party products or services including, but not necessarily limited to, Voice Services).

Contractor understands that the City may have, or may subsequently enter into, other contracts with vendors for identical or similar services. Therefore Contractor agrees that this Contract does not grant an exclusive right to Contractor to provide all services set forth in this Agreement or in Appendix B. Only specific technology descriptors (services) as set forth herein will be allowed for purchase under this Contract

Contractor agrees that license(s) purchased under this Contract irrespective of when the purchases were made, must have the start date when the license(s) was/were activated in the Contractor's portal by City personnel.

Before any products or services are provided under this Contract, Contractor must first receive written approval to proceed by the Information Technology Agency (ITA) via a Sub Authority for Expenditure (SAFE) issued to Contractor for the applicable services.

Except as provided in Appendix D, Contractor shall not disclose the City's confidential information to any third party unless specifically authorized in writing by the City.

III. COMPENSATION AND METHOD OF PAYMENT

A. Total Contract Expenditure

The total expenditure by the City under this Contract on an annual basis shall not exceed \$4,500,000, and in the aggregate the expenditures under this Contract shall not exceed \$22,500,000 (Twenty-Two Million, Five Hundred Thousand Dollars) during the term of this Contract.

Notwithstanding anything to the contrary, (i) City's obligations hereunder are payable only from funds specifically appropriated by the City Council; and (ii) City shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of City's future fiscal years unless and until the City Council appropriates funds for this Contract in City's budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of the last day of the last fiscal year for which funds were appropriated. City will make a good faith effort to notify Contractor in writing of any such non-appropriation of funds at the earliest possible date.

The Contractor further understands and agrees that execution of this Contract does not guarantee that any or all funds will be expended.

B. Invoices

Contractor shall submit monthly invoices to the City as follows:

Payment of invoices shall be subject to approval by the City. No payment shall be made for any incidental expense.

Contractor's invoices must conform to City standards and include, at a minimum, the following information:

1. Name and address of Contractor;
2. Name and address of the City department being billed;
3. Date of the invoice and the period covered;
4. Reference to this Contract number;
5. Reference to the ITA Written Approval (i.e., Sub Authority for Expenditure [SAFE]) authorizing the work performed by Contractor;
6. Description of the services performed and the amount due for the services;
7. Payment terms, total due and due date;
8. Remittance Address (if different from Contractor's address);
9. City's SAFE number

10. A copy of original invoice showing the actual cost of the material provided if any.

All invoices shall be submitted on Contractor's letterhead, contain Contractor's official logo, or contain other unique and identifying information such as name and address of Contractor. Invoices shall be submitted within 30 days of performance of services unless otherwise specified in Appendix D or E. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City Project Manager. The provisions of Section 8 of Appendix D, and Section 4 of Appendix E are hereby incorporated into this section.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of Contractor. The City will not compensate Contractor for any costs incurred for invoice preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate charges on invoices at any time.

Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and approve demands before they are drawn on the Treasury.

IV. CONTRACT REPRESENTATIVES

The following representative individuals and addresses shall serve as the place to which notices and other correspondence between the parties shall be sent. The City and Contractor shall notify, in writing, the other party of any changes in the information.

A. Contractor Representative

Contractor hereby appoints the following person to represent Contractor with respect to all business matters pertaining to this Contract.

Name:	Duc Do
Title:	VP, NA Strategic Accounts & Alliances, KANDY
Address	3605 E. Plano Parkway Plano, TX 75074
Telephone:	(951)907-9377
E-Mail	duc.do@genband.com

Legal notices, demands and communications should be directed to the following:

Name: Heather Pollard
Title: Paralegal
Address: 3605 E. Plano Parkway
Plano, TX 75074
Telephone: (972)461-7631
E-Mail: heather.pollard@rbbn.com

All payment and invoicing issues should be directed to the following:

Name: Jason Waligura
Title: Credit and Collections Manager
Address: 3605 E. Plano Parkway
Plano, TX 75074
Telephone: (972)521-5811
E-Mail: jason.waligura@genband.com

B. City's Representative

The City hereby appoints the following person, or her designated representative, to represent the City in all matters pertaining to this Contract.

Name: Laura Ito
Title: Director of Finance and Administration
Address: 200 North Main Street, Room 1400
Los Angeles, CA 90012
Telephone: (213)978-3322
E-mail: laura.ito@lacity.org

C. City's Project Manager

The CITY hereby appoints the following person to act as the Project Manager.

Name: Anne Wu
Title: Director of Communication Services
Address: 200 N. Main Street, Room 1300
Los Angeles, CA 90012
Telephone: (213)978-0088
E-mail: anne.wu@lacity.org

Formal notices, demands and communications from Contractor shall be given to the City's Representative with copies to the City's Project Manager.

Formal notices, demands and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accordance with this Section, within five (5) working days of said change.

V. CONTRACT AUDIT AND RECORDS

The City or its delegates will have access to monthly service bills via an agreed upon standard billing statements as well as where provided for in Appendix D and E.

Contractor shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the City. These records shall be retained for a period of no less than three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized City Personnel or by the City's representative at any time during the term of this Contract or within the three years following final payment made by the City hereunder or the expiration date of this Contract, whichever occurs last. Contractor shall provide any reports requested by the City regarding performance of this Contract.

VI. CONTRACTOR PERFORMANCE EVALUATION

At the end of this Contract, the City will conduct an evaluation of the Contractor's performance. The City may also conduct evaluations of Contractor's performance during the term of the Contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or services performed, the timeliness of performance, financial issues, and the expertise of personnel that Contractor assigns to the Contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City Evaluation and allowed 30 calendar days to respond. The City will use the final City evaluation, and any response from Contractor, to evaluate proposals and to conduct reference checks when awarding other personal services contracts.

VII. GENERAL CITY PROVISIONS

A. Non-Discrimination

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The Contractor shall comply with the applicable non-discrimination and affirmative action provisions of the laws of

the United States of America, the State of California, and the City. In performing this Contract, Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

B. Equal Employment Practices

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

1. During the performance of this Contract, the Contractor agrees and represents that it will provide equal employment practices and the Contractor and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to, or because of, race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - a. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - c. The Contractor agrees to post a copy of its Equal Employment Opportunity policy in conspicuous places at its place of business available to employees and applicants for employment.
2. The Contractor will, in all solicitations or advertisements for employees placed by, or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
3. As part of this City's supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of

Contract Compliance, Contractor shall certify in the specified format that he or she has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

4. The Contractor shall permit access to, and may be required to provide certified copies of, all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City contracts. On their or either of their request, the Contractor shall provide evidence that he or she has or will comply therewith.
5. The failure of any Contractor to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of City contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.
6. Upon a finding duly made that the Contractor has failed to comply with the Equal Employment Practices provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to, and retained by, the City. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, the Contractor shall be disqualified from being awarded a Contract with the City for a period of two years, or until the Contractor shall establish and carry out a program in conformance with the provisions hereof.
7. Notwithstanding any other provision of this Contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
8. [Intentionally Blank]
9. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

10. Contractor agrees to adhere to the Equal Employment Practices specified herein during the performance of this Contract.
11. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - a. Hiring practices;
 - b. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - c. Training and promotional opportunities; and
 - d. Reasonable accommodations for persons with disabilities.
12. Any subcontract entered into by Contractor to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of this Contract.

C. Affirmative Action Program

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time:

1. During the performance of this Contract, the Contractor certifies and represents that Contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
 - a. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - b. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - c. The Contractor shall post a copy of its Equal Employment

Opportunity policy in conspicuous places at its place of business available to employees and applicants for employment.

2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to their race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
3. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, or medical condition.
4. The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request, to provide evidence that it has or will comply therewith.
5. Contractor's failure to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of this Contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.
6. Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Office of Contract Compliance that the Contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City for a period of two years, or until he or she shall establish and carry out a program in conformance with the

provisions hereof.

7. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the City's Board of Public Works, or any court of competent jurisdiction, finds that the Contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or of the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to Contractor by the City under the contract, a penalty of \$10.00 for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
8. Notwithstanding any other provisions of this Contract, the City shall have any and all other remedies at law or in equity for any breach hereof.
9. [Intentionally Blank]
10. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
11. Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this section at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, Contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from the expiration, Contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - a. Every contract of \$5,000 or more which may provide construction demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - b. Contractor may establish and adopt as its own affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action

Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

12. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and Contractor.
13. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - a. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - b. Classroom preparation for the job when not apprenticeable;
 - c. Pre-apprenticeship education and preparation;
 - d. Upgrading training and opportunities;
 - e. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 - f. The entry of qualified women, minority and all other journeymen into the industry; and
 - g. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
14. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative

Contract Compliance Action Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

15. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
16. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the contractor's contract with the City.

D. Child Support Assignment Orders

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, Contractor will fully comply with all applicable State and Federal employment reporting requirements for Contractor's employees. Contractor shall also certify (1) that the Principal Owner(s) of Contractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that Contractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that Contractor will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of Contractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of Contractor to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the Contractor under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of Contractor to obtain compliance of its subcontractors shall constitute a default by Contractor under this contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to Contractor by the City.

Contractor certifies that, to the best of its knowledge, it is fully complying with the Earning Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

E. Americans with Disabilities Act

Contractor hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and its implementing regulations. Contractor will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. Contractor will not discriminate against persons with disabilities nor against persons due to their relationship to or associations with a person with a disability. Any subcontract entered into by Contractor, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

F. Contractor Responsibility Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, Contractor pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. Contractor further agrees to: (1) notify the City within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that Contractor is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the City within thirty calendar days of all findings by a government agency or court of competent jurisdiction that Contractor has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in

the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the City; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the City within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

G. Slavery Disclosure Ordinance

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. Contractor certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract

H. Iranian Contracting Act, 2010

In accordance with California Public Contract Code Sections 2200 – 2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign and submit the “Iran Contracting Act of 2010 Compliance Affidavit.”

I. Equal Benefits Ordinance

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, Contractor certifies and represents that Contractor will comply with the EBO.
- B. The failure of Contractor to comply with the EBO will be deemed to be a material breach of this Contract by the City.
- C. If Contractor fails to comply with the EBO the City may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

- E. If the City's Designated Administrative Agency determines that a Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Contract. Violation of this provision may be used as evidence against Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

VIII. MISCELLANEOUS

A. Current Los Angeles City Business Tax Registration Certificate Required

If applicable, Contractor represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, Contractor shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

B. Compliance with Los Angeles City Charter Section 470(c) (12)

The Contractor, its subcontractors, and their principals are obligated to fully comply with City of Los Angeles Charter Section 470 (c) (12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the contract is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor subject to Charter Section 470 (c) (12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Contract:

"Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions.

"As provided in Charter Section 470(c) (12) and related ordinances, you are a subcontractor on City of Los Angeles contract #_____. Pursuant to City Charter Section 470 (c) (12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain

elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to Contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Contractor within 5 business days. Failure to comply may result in termination of the contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213.978.1960."

Contractor, its subcontractors, and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all remedies available at law.

C. Insurance

During the term of this Contract and without limiting Contractor's indemnification of the City, Contractor shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by Contractor, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Appendix A hereto), covering its operations hereunder. Such insurance shall conform to City requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Appendix A hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. Contractor shall comply with all Insurance Contractual Requirements shown on Appendix A hereto. Appendix A is hereby incorporated by reference and made a part of this Contract.

D. Excusable Delays

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

E. Termination

1. Termination for Convenience

The City may terminate this Contract for the City's convenience at any time by giving Contractor thirty days written notice thereof. Contractor shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The City shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary underlying commitment costs incurred by Contractor to affect such termination, such underlying commitment costs to only be those costs which are directly related and result from such termination. Thereafter, Contractor shall have no further claims against the City under this Contract. All finished and unfinished documents and materials (excluding Contractor's Software which is licensed and not sold) which comprises Work Product under this Contract, including all intellectual property rights created under this Contract unless otherwise provided for pursuant to Appendix D or E shall become City property upon the date of such termination Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

2. Termination For Breach of Contract

Except as otherwise provided for in Appendix D and/or E:

- a. Except for excusable delays as provided in Section VIII. D. Excusable Delays, if Contractor fails to perform any of the material provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the City may give Contractor written notice of such default. If Contractor does not cure such default or provide a plan to cure such default which is acceptable to the City within a reasonable time period permitted by the City, then the City may terminate this Contract due to Contractor's breach of this Contract.
- b. If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then the City may immediately terminate this Contract.
- c. If Contractor engages in any dishonest conduct related to the performance or administration of this Contract or violates the City's lobbying policies, then the City may immediately terminate this Contract.

- d. In the event the City terminates this Contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Contractor shall be liable to the City for all of its costs and damages, including, but not limited, any excess costs for such services.
- e. All finished or unfinished documents and materials produced or procured under this Contract (excluding Contractor's Software which is licensed and not sold) which comprises Work Product under this Contract, including all intellectual property rights created under this Contract unless otherwise provided for pursuant to Appendix D or E, shall become City property upon date of such termination. Contractor agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.
- f. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that Contractor was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section VIII. E.I. Termination for Convenience.
- g. The rights and remedies of the City and the Contractor provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

F. INDEMNIFICATION

Except for the active negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Contractor undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by Contractor or its subcontractors of any tier. As a condition thereof, the City

shall give Contractor prompt written notice of such suits, claims, allegations and other matters for which indemnification is applicable, tender the defense thereof to Contractor and render reasonable assistance thereto (at Contractor's expense). Contractor's defense of such suits, claims and allegations and any settlement thereof shall not impose any additional obligations on the City nor prejudice its rights with respect to Contractor's indemnification obligations unless expressly agreed to in writing by the City. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of this section shall survive expiration or termination of this Contract.

G. INTELLECTUAL PROPERTY INDEMNIFICATION

Contractor, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the City, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by Contractor, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the City's actual or intended use of any Work Product furnished by Contractor, or its subcontractors of any tier, under the Agreement. As a condition thereof, the City shall give Contractor prompt written notice of such suits, claims, allegations and other matters for which indemnification is applicable, tender the defense thereof to Contractor and render reasonable assistance thereto (at Contractor's expense). Contractor's defense of such suits, claims and allegations and any settlement thereof shall not impose any additional obligations on the City nor prejudice its rights with respect to Contractor's indemnification obligations unless expressly agreed to in writing by the City. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City. The provisions of this section shall survive expiration or termination of this Contract.

H. INTELLECTUAL PROPERTY WARRANTY

Contractor represents and warrants that its performance of all obligation under this Contract does not infringe in any way, directly or contributorily,

upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information. In the event of Contractor's breach of such warranty, the respective obligations, rights and remedies with respect thereto shall be as set forth in Paragraph G (INTELLECTUAL PROPERTY INDEMNIFICATION) set forth above.

I. LIMITATION OF LIABILITY

IN NO EVENT WILL THE, AGGREGATE LIABILITY OF CONTRACTOR WITH RESPECT TO (A) INABILITY OF THE SERVICES TO FUNCTION PROPERLY AS A RESULT OF ELECTRONIC AND/OR CYBERNETWORK EVENTS, AND (B) BREACHES OF ELECTRONIC SYSTEMS AND DAMAGES RESULTING FROM SUCH BREACHES AFFECTING PERSONAL DATA AND/OR CUSTOMER DATA EXCEED TWENTY-TWO MILLION FIVE-HUNDRED THOUSAND U.S. DOLLARS (USD\$22,500,000.00). THE FOREGOING LIMITATION SHALL NOT APPLY TO THE OBLIGATIONS OF INDEMNIFICATION AS SET FORTH IN SECTIONS F AND G, ABOVE, EXCEPT TO THE EXTENT THAT SUCH INDEMNIFICATION OBLIGATIONS PERTAIN TO THIRD PARTIES ALLEGATIONS OR CLAIMS FOR DAMAGES ARISING OUT OF THE CONDITIONS SET FORTH IN (A) AND (B) IN THE PRECEEDING SENTENCE, IN WHICH CASE THE AFOREMENTIONED LIMITATION SHALL APPLY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE AND SUCH LIMITATION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE CONTRACT OR PORTIONS THEREOF. FOR GREATER CERTAINTY, THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY RELATED TO PERSONAL INJURY OR PROPERTY DAMAGE, INCLUDING INDEMNIFICATION OBLIGATIONS RELATED TO PERSONAL INJURY OR PROPERTY DAMAGE.

J. OWNERSHIP AND LICENSE

All Work Products originated and prepared by Contractor or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the City for its use in any manner it deems appropriate. Work Products subject to the requirements set forth below shall mean all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property ("IP materials").

Notwithstanding the foregoing, ordinary activities of Contractor in performance of this Contract and not involving the development of IP materials particular to the City shall not be deemed to create Work Products and, accordingly, Contractor will not create any Work Product under this Contract unless expressly requested to do so by the City and documented in an Appendix hereto. To the extent that the foregoing provisions apply, Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this Contract and Contractor further agrees to execute any documents necessary for the City to perfect, memorialize, or record City's ownership or rights provided herein.

Contractor shall not provide or disclose any Work Product to any third party without prior written consent of the City.

Any subcontract entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the City's ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject Contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of Contractor's contract with the City.

K. RATIFICATION CLAUSE

Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services prior to the execution of this Contract. To the extent that said services were performed in accordance with the terms and conditions of this Contract, those services are hereby ratified.

L. OWNERSHIP CHANGE OR NAME CHANGE

In the event of a change of name of the Contractor or a change of control or ownership of the Contractor where the new owner is able to comply with and assume all Contract terms and conditions, the General Manager of ITA may, at his discretion, execute an amendment to effect the assumption and/or change the Contractor name for this Contract. Notwithstanding the foregoing, if the Contractor divests a material portion of its business or assets thereof which relate to the services, Contractor may assign this Contract. The City

acknowledges that Contractor is engaged in a contingent merger activity with Sonus Networks, Inc. and hereby consents to the assumption of this Contract by Sonus Networks, Inc., Ribbon Communications, or the applicable controlling entity following such merger.

M. CONTRACT MODIFICATIONS, CHANGES OR AMENDMENTS

This Contract which consists of this Contract, plus Appendices A, B C, D and E, constitutes the entire Contract between the City and Contractor. The parties may mutually agree to add, delete or modify Appendix B (part number, description, MSRP, discount and/or unit cost). For any modification to Appendix B that is within the scope of this Contract, the Contractor shall prepare a revised Appendix B for review and approval by the City's Project Manager. In the event that an agreement is reached, both the City's Project Manager and a duly authorized representative of the Contractor shall sign and date the revised Appendix B without further action by the Office of the Mayor. All other amendments to this Contract shall be in writing and signed, duly authorized and approved by all City representative required to enter into contracts on behalf of the City.

N. APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. Contractor shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, Contractor and the City consent to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

O. BREACH AND WAIVER

Except for excusable delays as previously described in this Agreement, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of

those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

P. PERMITS

Contractor and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for Contractor's performance hereunder and shall pay any fees required therefor. Contractor certifies to immediately notify the City of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

Q. FALSE CLAIMS ACT

Contractor acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the City under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

VIII. ORDER OF PRECEDENCE

The following appendices are hereby incorporated into and made a part of this Contract where referred to as though set forth at length. In the event of an inconsistency between any of the provisions of this Contract and/or Appendices attached hereto, the inconsistency shall be resolved by giving precedence in the following order:

Contract

Appendix A: Required Insurance and Minimum Limits (Form Gen. 146, Rev. 9/06).

Appendix B: GENBAND KBS Catalog

Appendix C: GENBAND KBS Service Level Agreement

Appendix D: KANDY Subscription Services

Appendix E: Voice Services

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed by their respective duly authorized officers:

APPROVED AS TO FORM:
Michael N. Feuer City Attorney

CITY OF LOS ANGELES

By: _____
Steven H. Hong
Deputy City Attorney III

Laura Ito
Assistant General Manager
Information Technology Agency

Date: _____

Date: _____

ATTEST: Holly Wolcott,
City Clerk

GENBAND US LLC

By: _____

Signature

Date: _____

Printed Name

Title

Date

Required Insurance and Minimum Limits

Name: GENBAND US LLCDate: 10/31/2017Agreement/Reference: Telecommunication Services for Legacy Nortel IP Phones

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

☒ **Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)**
WC StatutoryEL \$1,000,000☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

☒ **General Liability**
\$1,000,000☒ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐

☒ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)
\$1,000,000

☒ **Professional Liability** (Errors and Omissions)
\$1,000,000Discovery Period 12 Months After Completion of Work or Date of Termination

☐ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐

☐ **Pollution Liability**
☐

☐ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

100% of the contract price

☐ **Crime Insurance**
Other: Sent to Irene Mayeda @ ITA1) Cyber Liability Insurance is required with minimum limits of \$10 million

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the best method of submitting your documents. **Track4LA®** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format – the CITY is a licensed redistributor of ACORD forms. Track4LA® advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **Track4LA®** at <http://track4la.lacity.org> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 that have been approved by the State of California may be accepted, however **submissions other than through Track4LA® will significantly delay the insurance approval process as documents will have to be manually processed.** All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Completed **Insurance Industry Certificates other than ACORD 25 Certificates** are sent electronically to CAO.insurance.bonds@lacity.org.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **Track4LA®**, the CITY's online insurance compliance system, at <http://track4la.lacity.org>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **Track4LA®** at <http://track4la.lacity.org>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). **A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.



KBS CATALOG

PAGE 1 of 5



CITY OF LOS ANGELES
200 NORTH MAIN STREET,
LOS ANGELES, CA 90010

Date: 1-12-2018
Version: 6.0

QTY/ Unit	PART NUMBER	DESCRIPTION	MSRP	DISCOUNT	UNIT COST
1	925-0114-101-NT	KBS – Kandy Business Solutions Services without Transcriptions - unit (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$20.00	\$14.00	\$6.00
1	925-0114-101-1	KBS – Kandy Business Solutions Services with Transcriptions - unit (0165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$20.00	\$12.65	\$7.35
1	925-0114-112	KBS – Kandy Business Solutions Services with Transcriptions - 12 units (0165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$240.00	\$151.80	\$88.20
1	925-0114-124	KBS – Kandy Business Solutions Services with Transcriptions - 24 units (00165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$480.00	\$303.60	\$176.40
1	925-0114-136	KBS – Kandy Business Solutions Services with Transcriptions - 36 units (0165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$720.00	\$455.40	\$264.60
1	925-0114-148	KBS – Kandy Business Solutions Services with Transcriptions - 48 units (0165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$960.00	\$607.20	\$352.80
1	925-0114-160	KBS – Kandy Business Solutions Services with Transcriptions - 60 units (0165-0170-0173-0168 with Transcriptions, Meetme with 10 Attendees)	\$1,200.00	\$759.00	\$441.00
1	925-0114-112-NT	KBS – Kandy Business Solutions Services without Transcriptions - 12 units (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$240.00	\$168.00	\$72.00
1	925-0114-124-NT	KBS – Kandy Business Solutions Services without Transcriptions - 24 units (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$480.00	\$336.00	\$144.00
1	925-0114-136-NT	KBS – Kandy Business Solutions Services without Transcriptions - 36 units (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$720.00	\$504.00	\$216.00
1	925-0114-148-NT	KBS – Kandy Business Solutions Services without Transcriptions - 48 units (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$960.00	\$672.00	\$288.00
1	925-0114-160-NT	KBS – Kandy Business Solutions Services without Transcriptions - 60 units (0165-0173-0168 without Transcriptions, Meetme with 10 Attendees)	\$1,200.00	\$840.00	\$360.00
1	925-0071-101	KBS - Voicemail (Transcription) per unit (SPCL-BNDL-003)	\$5.20	50.00%	\$2.60
1	IFC-0144-102	Auto Attendant	\$10.00	50.00%	\$5.00
1	925-0189-101	BusinessFax Services	\$10.00	50.00%	\$5.00
1	CoLA-SO-SS-010	Smart Office Screen Sharing (10 Party)	\$10.00	50.00%	\$5.00
1	CoLA-SO-SS-030	Smart Office Screen Sharing (30 Party)	\$20.00	50.00%	\$10.00
1	CoLA-SO-SS-050	Smart Office Screen Sharing (50 Party)	\$30.00	50.00%	\$15.00



KBS CATALOG

PAGE 2 of 5



CITY OF LOS ANGELES
200 NORTH MAIN STREET,
LOS ANGELES, CA 90010

Date: 1-12-2018
Version: 6.0

QTY/ Unit	PART NUMBER	DESCRIPTION	MSRP	DISCOUNT	UNIT COST
1	CoLA-SO-MPV-010	Smart Office Multi Party Video (10 Party)	\$20.00	50.00%	\$10.00
1	CoLA-SO-MPV-030	Smart Office Multi Party Video (30 Party)	\$36.00	50.00%	\$18.00
1	CoLA-SO-MPV-050	Smart Office Multi Party Video (50 Party)	\$48.00	50.00%	\$24.00
1	IFC-0078-101	MeetMe Conferencing (50 Attendee)	\$6.50	50.00%	\$3.25
1	IFC-0122-102	MeetMe Conferencing (100 Attendee)	\$13.00	50.00%	\$6.50
1	IFC-0122-103	MeetMe Conferencing (150 Attendee)	\$19.50	50.00%	\$9.75
1	IFC-0122-104	MeetMe Conferencing (200 Attendee)	\$26.00	50.00%	\$13.00
1	IFC-0084-101	Basic Call Center (32 agents per queue)	\$30.00	50.00%	\$15.00
1	CC-WB-UCD-002	Unlimited Basic Call Center Wallboards	\$0.00		\$0.00
1	CC-WB-HG-002	Unlimited Hunt Group Wallboards	\$20.00	\$7.00	\$13.00
1	NAO-009	Call recording per month (per agent)	\$10.00	50.00%	\$5.00
1	NAO-010	Storage Rate per minute of recorded content	\$0.00050	\$0.00015	\$0.00035
1	IFC-NOD-001	Network Observation Device	\$45.00	50.00%	\$22.50
1	CCL-001	QueueManager functionality per agent (MRC)	\$23.40	50.00%	\$11.70
1	CCL-002	Supervisor Console/Wallboard (MRC)	\$118.30	50.00%	\$59.15
1	NAO-017	Operator Console (softphone for Administrator/Secretary) (MRC)	\$36.40	50.00%	\$18.20
1	CCL-SU-001	QueueManager setup per agent (one time charge)	\$65.00	50.00%	\$32.50
1	CCL-SU-002	Supervisor Console/Wallboard setup (one time charge)	\$169.00	50.00%	\$84.50
1	NAO-SU-017	Operator Console setup, per user (one time charge)	\$169.00	50.00%	\$84.50
1	IFC-0096-101	Corss-Connect (Fiber)	\$470.00	\$15.00	\$455.00
1	SSL-001	SSL Certificate	\$500.00	\$0.00	\$500.00
1	925-0097-101	Add-on Installation per hour	\$250.00	50.00%	\$125.00



KBS CATALOG

PAGE 3 of 5



CITY OF LOS ANGELES
200 NORTH MAIN STREET,
LOS ANGELES, CA 90010

Date: 1-12-2018

Version: 6.0

QTY/ Unit	PART NUMBER	DESCRIPTION	MSRP	DISCOUNT	UNIT COST
1	KVA-004	Kandy Visual Attendant Unlimited (No PSTN, MRC)	\$120.00	50.00%	\$60.00
1	KVA-009	Kandy Visual Attendant Top Up	\$32.00	50.00%	\$16.00
1	KLS-001	Kandy LiveSupport Agent (add on to UC), MRC	\$120.00	50.00%	\$60.00
1	KLS-002	Kandy LiveSupport Chat only (add on to UC), MRC	\$50.00	50.00%	\$25.00
1	KLS-101	Kandy LiveSupport Agent (no UC), MRC	\$120.00	50.00%	\$60.00
1	KLS-102	Kandy LiveSupport Chat only (no UC), MRC	\$50.00	50.00%	\$25.00
1	KLS-005	Kandy LiveSupport Digital Cognitive- Per Agent, MRC	\$99.00	40.00%	\$60.00
1	KLS-006	Kandy LiveSupport DCA API Charge - includes 25K API calls, MRC	\$600.00	33.00%	\$400.00
1	925-1213-101	Smart Office OMNI container branding for Windows, MAC, Android (First client price 2729, incremental client price 1819)	\$ 4,548.00	NA	\$4,548.00
1	925-1213-101	Skype OMNI container branding for Windows, MAC - NRC	\$ 4,548.00	NA	\$4,548.00
1	925-0035-101	GENCom client branding - Cat 1 Android Phone, iPhone, iPad, MAC - NRC (one time charge)	\$ 12,309.00	NA	\$12,309.00
1	925-0173-101	Experius Meet Me Conferencing License (50 Attendee) - NRC	\$3.00	50.00%	\$1.50
1	925-0173-101-100	Experius Meet Me Conferencing License (100 Attendee) - NRC	\$6.00	50.00%	\$3.00
1	925-0173-101-150	Experius Meet Me Conferencing License (150 Attendee) - NRC	\$9.00	50.00%	\$4.50
1	925-0173-101-200	Experius Meet Me Conferencing License (200 Attendee) - NRC	\$12.00	50.00%	\$6.00
1	EXPE001	Experius AS Voice License (Block of 100 units) NRC	\$ 7,829.54	50.00%	\$3,914.77
1	EXPE002	Experius AS Advanced Feature (Block of 100 units) NRC	\$ 722.72	50.00%	\$361.36
1	NKRS0309	UC PC client with Video (block of 100 units) (NRC)	\$ 2,150.16	50.00%	\$1,075.08
1	N0084849	Software Feature Activation (NRC)	\$ 1,600.00	50.00%	\$800.00
PART NUMBER		DESCRIPTION (IntelePeer)	UNIT	CHARGE TYPE	CHARGE
Atmosphere® INBOUND SERVICES (Flat Rate)					
10000424	U.S. Domestic, pay per MOU—Flat Rate Usage		Minute	Per Unit	\$0.0040
10000423	U.S. Domestic Switched DID, pay per MOU—Flat Rate Usage		Minute	Per Unit	\$0.0125
Atmosphere® DOMESTIC INBOUND TOLL FREE SERVICES (Flat Rate)					
10000378	Dedicated Toll Free Service—U.S. Domestic 48, pay per MOU—Flat Rate Usage		Minute	Per Unit	\$0.0125
10000375	Switched Toll Free Service—U.S. Domestic 48, pay per MOU—Flat Rate Usage		Minute	Per Unit	\$0.0250



KBS CATALOG

PAGE 4 of 5



CITY OF LOS ANGELES
200 NORTH MAIN STREET,
LOS ANGELES, CA 90010

Date: 1-12-2018

Version: 6.0

PART NUMBER	DESCRIPTION	UNIT	CHARGE TYPE	CHARGE
10000378	Dedicated Toll Free Service—U.S. Alaska, pay per MOU—Flat Rate Usage	Minute	Per Unit	\$0.35
10000378	Dedicated Toll Free Service—U.S. Hawaii, pay per MOU—Flat Rate Usage	Minute	Per Unit	\$0.0820
10000378	Dedicated Toll Free Service—Canada, pay per MOU—Flat Rate Usage	Minute	Per Unit	\$0.0250
10000378	Dedicated Toll Free Service—Puerto Rico, pay per MOU— Flat Rate (787, 939)	Minute	Per Unit	\$0.1100
10000378	Dedicated Toll Free Service—Guam, pay per MOU— Flat Rate (671)	Minute	Per Unit	\$0.1500
10000378	Dedicated Toll Free Service—Saipan, pay per MOU— Flat Rate (670)	Minute	Per Unit	\$0.2900
10000378	Dedicated Toll Free Service—U.S. Virgin Islands, pay per MOU— Flat Rate (340)	Minute	Per Unit	\$0.1100
Atmosphere® OUTBOUND SERVICES (Flat Rate)				
10000388	Outbound Termination—US Domestic 48, Hawaii and Canada, pay per MOU—Flat Rate Usage	Minute	Per Unit	\$0.0080
	Alaska Outbound Termination, pay per MOU—Flat Rate Usage	Minute	Per Unit	\$0.25
	International Outbound Termination, pay per MOU—Flat Rate Usage	Minute	Per Unit	Variable
Atmosphere® E911 EMERGENCY SERVICES				
10000028	Emergency Services per call to ECC	Call	Per Unit	\$75.00
10000050	Emergency Svcs / DID Setup Fee (Dom US)	Number	NRC	\$0.00
10000029	Emergency Svcs / DID per Month (Dom US)	Number	MRC	\$0.00
ANCILLARY FEES				
Atmosphere® Inbound				
10000002	Telephone Number per Month	Number	MRC	\$0.50
10000001	Telephone Number Setup Fee	Number	NRC	\$0.00
10000003	Telephone Number Port Fee	Number	NRC	\$0.00
10000081	Telephone Number Port Fee Expedited (within 48 hrs of FOC)	Number	NRC	\$15.00
10000070	Port Cancellation Fee	Number	NRC	\$7.50
10000082	Port Cancellation Fee—Expedited (within 48 hrs of FOC)	Number	NRC	\$75.00
10000004	Directory Listing Setup Fee	Number	NRC	\$10.00
10000005	Directory Listing per Month	Number	MRC	\$0.00
10000008	Caller ID/Name Registration Setup Fee	Number	NRC	\$3.00
10000006	Caller ID/Name Delivery per Month	Number	MRC	\$0.00



KBS CATALOG

PAGE 5 of 5



CITY OF LOS ANGELES
200 NORTH MAIN STREET,
LOS ANGELES, CA 90010

Date: 1-12-2018
Version: 6.0

10000460	Sequential Number Setup Fee	Order	NRC	\$50.00
10000461	Vanity Number Setup Fee	Number	NRC	\$50.00
Atmosphere® Outbound				
10000030	High Volume/Short Duration Surcharge per Call	Call	Per Unit	\$0.01
10000036	Outbound Toll Free - Domestic	Minute	Per Unit	\$0.00
Atmosphere® Toll Free				
10000013	Toll Free-Telephone Number per Month - IntelPeer RESPORG	Number	MRC	\$0.85
PART NUMBER	DESCRIPTION	UNIT	CHARGE TYPE	CHARGE
10000012	Telephone Number (RespOrg) Port Fee	Number	NRC	\$0.00
10000076	Telephone Number Setup Fee	Number	NRC	\$0.00
10000017	National Toll Free Directory Listing Setup Fee	Number	NRC	\$20.00
10000018	National Toll Free Directory Listing per Month	Number	MRC	\$20.00
10000071	Prison Phone Surcharge-pay per MOU	Minute	Per Unit	Pass Through
10000010	Payphone Surcharge per Call	Call	Per Unit	\$0.60
10000090	Non Complete Surcharge per Call in excess of 10%	Call	Per Unit	\$0.05
10000077	Number Administration Service Center (NASC) Forced ID Change Fee	Number	NRC	\$40.00
10000009	Vanity Number Setup Fee	Number	NRC	\$50.00
PART NUMBER	DESCRIPTION	First client price	Incremental client with same branding price	
925-1212-101	Smart Office client branding for Windows			
925-1212-101	Smart Office client branding for MAC	\$4,549	\$0	
925-1212-101	Smart Office client branding for Android			
925-1212-101	Smart Office client branding for iOS	\$4,549	\$0	
		\$9,098		
925-1213-101	Smart Office OMNI container branding for Windows			
925-1213-101	Smart Office OMNI container branding for MAC			
925-1213-101	Smart Office OMNI container branding for Android			
925-1213-101	Smart Office OMNI container branding for iOS	\$3,411	\$2,274	
		\$10,233		
Total		\$19,330		

APPENDIX C

SERVICE LEVEL AGREEMENT

This Appendix C sets out a description how reports of System problems, called Cases, are reported and characterized, as well as the Service Level Agreement with GENBAND's response and restoration time obligations for each.

Case Severity Classification

GENBAND uses Case priorities as defined below. Service Provider will provide GENBAND the severity level from each ticket based on the classifications and guidelines detailed below for Products in live systems. If it is not clear which severity level applies to the reported hardware/software problem, then the severity level will be mutually agreed upon between Service Provider and GENBAND. Any reclassifications will be through mutual consent.

Severity Classification	Examples
Critical	Total System Outage; or Total service outage for other primary services including Voicemail, Auto Attendant, Conferencing and Mobility; or Total service outage affecting client connectivity (i.e., soft or hard clients cannot register to the service); or Loss of origination or termination capability for more than 5% of subscribers; or KBS System congestion resulting in call blocking greater than 10% for greater than 60 seconds.
Major	Intermittent degradation of services; partial loss of access to provisioning; or The customer has been given a workaround but the situation still requires constant attention due to the temporary nature of the workaround; or Loss of access for routine administrative activity.
Minor	Non-system-affecting problems. Documentation inaccuracies Problems introduced through incorrect configuration of the system

Service Level Requirements for Response, Recovery and Resolution times, by Case Severity.

Severity	Recovery	Resolution
Critical	Total voice service outages: 90% in 2 hours after GENBAND notification of incident* All other Critical cases: 90% in 4 hours after GENBAND notification of incident*	All Critical cases shall be worked to service recovery. If follow-up is necessary, post service recovery, it will be followed up with a Major.
Major	n/a	90% resolved in 30 days or with next delivery of Maintenance Release** KBS Portal cases – 90% within 30 days.
Minor	n/a	90% resolved in 180 days

*In the event that the *Service Provider* requests GENBAND to delay case resolution until an open maintenance window, GENBAND reserves the right to include such delays in measuring the performance against the resolution targets.

If the *Service Provider* personnel are not able to maintain constant contact during the resolution of Critical cases, GENBAND reserves the right to downgrade the category assignment of the case.

** With the exception of critical issues, code changes are applied to the system through regularly scheduled maintenance releases which might not fall within the 30 day window.

Non-critical performance objectives for resolution may from time to time default to maintenance release schedules and Maintenance window schedules for the KBS Cloud System.

The above service level requirements are applicable to the KBS Cloud System only and exclude ISP, Networking, MPLS connections, Service Provider roles, responsibilities, Channels or end customer LAN/WAN systems and phones. GENBAND will not be responsible for case work and delays resulting from the Customer's activities and responsibilities. Case work and delays arising as a result will be billable at GENBAND's then-current time and material rates.

Unavailability

At Service Provider's request, GENBAND will calculate Total Unavailability. Total Unavailability comprises the number of minutes in which the Standard KBS service was completely unavailable or as mutually agreed to be performing so poorly as to be effectively unusable within the Demarcation Point of GENBAND's Data Center infrastructure. Total Unavailability will be counted only if the Service Provider opens a Critical trouble ticket over the phone with GENBAND's Customer Support within twelve (12) hours of the total outage.

Exclusions

The following shall be excluded from the application of service level requirements and the measurement of Total Unavailability ("Exclusion"):

- (a) Failure by the Service Provider to open a Critical trouble ticket over the phone with GENBAND's Customer Support within twelve (12) hours of the total outage;
- (b) Faults arising from the Service Provider's, Downstream Service Provider's or End User's equipment or applications;
- (c) Equipment outside of GENBAND's Data Center Demarcation including, but not limited to, phones, handsets, routers, switches, client registration errors, WiFi, 3G/4G/LTE, internet, MPLS, IP/Ethernet circuits, PSTN;
- (d) Service Provider's acts or omissions, or those of the Downstream Service Providers and/or End Users;
- (e) The duration of time required for Service Provider, Downstream Service Provider and/or End User to provide GENBAND's staff access to data needed to troubleshoot and isolate the causes;
- (f) Reasons of Force Majeure, Emergency Works or Threat provided that GENBAND has provided notice in accordance with the terms of the Agreement;
- (g) The duration for which any service provided by Service Provider which impacts KBS is down or unavailable to GENBAND; or
- (h) Periods of notified maintenance.

Service Credits

After GENBAND's closure of the Critical case, for each cumulative hour of Total Unavailability, Service Provider's account shall be credited the pro-rated charges for one day of the Monthly Charge for Business Voice Service Code (i.e., each cumulative hour of Total Unavailability is equivalent to and eligible for one hour of service credit) multiplied by the number of lines assigned to the respective End User and specifically affected by the total outage. If the Business Voice Service has not been purchased and, instead, an "a la carte" feature has been purchased, then the credit will equal the value of the actual affected feature multiplied by the number of lines assigned to the End User

and specifically affected by the total outage. The total calculated credit will not exceed the total Monthly Charge for the affected lines of the respective End User. Such credits will be used to offset the future month's service charges. Service credits have no cash value.

Service Provider's right to the aforementioned service credits shall be in full and final settlement of GENBAND's liability for failure to achieve service level requirements.

APPENDIX D

KANDY SUBSCRIPTION SERVICES General Terms

1. DEFINITIONS.

1.1 **"Appendix"** (inclusive of this Appendix D) means an attachment to the Contract which will enable the Customer to avail of a specific offering to be provided by GENBAND other the KANDY Business Solutions including without limitation the description, terms and conditions, and/or other business terms.

1.2 **"Affiliate"** means, with respect to Customer, any person or entity that controls, is controlled by, or is under common control with such party, where "control" means ownership of fifty percent (50%) or more of the outstanding voting shares or the ability to otherwise control the direction and management of such entity. With respect to GENBAND, Affiliate means GENBAND Holdings Company and any legal entity for which it controls fifty percent (50%) or more of the outstanding voting shares or has the ability to otherwise control the direction and management of such entity.

1.3 **"Confidential Information"** means the Contract, Appendices attached thereto (including this Appendix D), the GENBAND Technology, Software, the Service(s), Documentation, GENBAND pricing information, and any other information disclosed by one party to the other party in connection with the Contract that the disclosing party, clearly identifies as confidential, including any information of which unauthorized disclosure could be detrimental to the interests of the disclosing party. Customer Data shall be considered Confidential Information.

1.4 **"Contract"** means the Contract between the City of Los Angeles and GENBAND to which this Appendix D is attached and incorporated.

1.5 **"Customer"** means the City of Los Angeles.

1.6 **"Customer Data"** means any files, recordings, sound, music, graphics, images, code or other content provided or submitted by Customer or its End Users to or through the Service, including, but not limited to, information pertaining to Customer's or its End Users' IP address, username, password, name, email address and Personal Data. In no event will Customer Data include GENBAND Technology, GENBAND Intellectual Property Rights, Documentation or other GENBAND Confidential Information.

1.7 **"Documentation"** means the manuals, Service Description(s) and other hard copy or electronic guidance GENBAND may provide for use of the Service.

1.8 **"End User"** means an entity or individual using the Service(s). For greater certainty, Customers and Downstream Service Providers may be End Users.

1.9 **"GENBAND Technology"** means GENBAND's proprietary software or the software of its licensors (in all forms, including source code and executable forms) and other owned or rightfully licensed GENBAND technology provided via the Service, including any enhancements, modifications, and derivative works to any of the foregoing.

1.10 **"Intellectual Property Rights"** means worldwide patents, inventions (whether patented or not), copyrights, trademarks, service marks, trade names, domain name rights, know-how, Confidential Information, trade secret rights, moral rights and all other intellectual property rights and similar forms of protection.

1.11 **"KANDY Business Solutions" or "KBS"** means the portfolio of Services available to Customer under this Contract as set out in the KBS Service Description and Appendix B.

1.12 **"Open Source Software"** means source code subject to the terms of public, free and open source licenses, including, but not limited to, the GNU General Public License and the GNU Lesser General Public License. The GNU General Public License and the GNU Lesser General Public License can be viewed at <http://www.gnu.org/licenses/gpl.html> and <http://www.gnu.org/licenses/lgpl.html>, respectively.

1.13 **"Output"** means the features, applications, data or other outputs that Customer generates or obtains through its use of certain Services.

1.14 **"Personal Data"** means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

1.15 **"Pre-Existing IPR"** of a party means any proprietary rights or Intellectual Property Rights of such party, or its third party licensors, that (i) is conceived, created, or developed prior to use of the Service, or (ii) is entirely unrelated to any Services provided under this Contract and, with respect to Customer, does not include any portion or derivative work of GENBAND Technology or GENBAND Intellectual Property Rights.

1.16 "Service(s)" means the service platform, access to a specified website or portal, any services provided hereunder and/or any ancillary products or services provided by GENBAND hereunder. Any references in an Appendix to the "purchase" of Services shall mean only the obtaining of a subscription to use the Services, and all references to "sale" or "selling" of Services shall mean only the obtaining of a subscription to use the Services.

1.17 "Service Description" means the KBS Service Description, which sets out the description of Services available in the GENBAND KBS portfolio of Services and also fully sets out each party's responsibilities. The Service Description is available upon request by Customer. This document is incorporated by reference into the Contract and may be updated from time to time by GENBAND.

1.18 "Subscription Period" means the time period during which time Customer may use the Service.

1.19 "Software" means computer programs in written or electronic form, including associated documentation.

1.20 "Support Services" means the support services, if any, offered by GENBAND herein or in an associated Appendix.

1.21 "Taxes" means any federal, state, provincial, local, municipal or other governmental taxes, duties, levies, fees, excises or tariffs, arising as a result of or in connection with any amounts paid under this Contract, including without limitation: (a) any state or local sales or use taxes; (b) any import, value added or consumption tax; (c) any business transfer tax; (d) any taxes imposed or based on or with respect to or measured by any net or gross income or receipts of either Party; or (e) any franchise taxes, taxes on doing business, gross receipts taxes, taxes imposed on assets, or capital stock taxes.

1.22 "Voice Services" means the telecommunications services provided to Customer by the provider as set out in Appendix E or other applicable Voice Services Appendix. For greater certainty, Voice Services do not include KBS Services. The Customer shall be entitled to order and avail of the Voice Services set out in the Appendix on the terms and conditions reflected herein.

2. PROVISION OF SERVICE AND GENBAND TECHNOLOGY.

2.1 Access Right. Subject to payment of any applicable fees in accordance with the terms of the Contract, Customer shall be granted the right to use the Services as set forth in this Appendix D and the Contract (the "Subscription"). The Subscription provided hereunder is non-exclusive, revocable, limited in term, nontransferable during the Subscription Period. Customer is granted this Subscription solely for Customer's internal business purposes and to provide services to End Users as set forth in Section 2.3 (End User Rights) and, if set forth in an Appendix, to create Output. GENBAND reserves all rights not expressly granted hereunder. GENBAND may create and maintain administrative, support, system, and maintenance accounts within the Service(s), all with data access for GENBAND and its assigned agents and/or other service providers, in order to deliver the Service.

2.2 Access and License Restrictions. Except as expressly set forth in this Appendix D or in an Appendix hereto, as permitted during the Subscription Period, Customer will not (i) grant access or use, sell, transfer, assign, distribute, rent, lease, time share or otherwise commercially exploit the Service or GENBAND Technology to any third party; (ii) modify or create derivative works based on the Service or GENBAND Technology; (iii) create Internet "links" to the Service or "frame" or "mirror" any content provided in connection therewith; (iv) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Service or the GENBAND Technology in whole or in part, except as and only to the extent this restriction is prohibited by law; (v) copy any features, functions or graphics of the Service or GENBAND Technology; (vi) directly or indirectly create or attempt to create a localized version of the Software, Service, GENBAND Technology or any features, functions or graphics thereof; (vii) remove or obscure any proprietary or other notice contained in the Service or GENBAND Technology; or (viii) disclose or publish performance benchmark results for the Service or GENBAND Technology. User accounts and subscriptions cannot be shared or used by more than one individual.

2.3 End User Rights. Customer, subject to the terms of this Appendix may grant to End Users a limited, non-exclusive, nontransferable, revocable right to use the Services for such Customers' internal business purposes. Individual Software licenses may be included in Addenda, as applicable. Customer shall be fully responsible for the acts, errors or omissions of End Users and may not grant to such parties rights or warranties beyond those granted herein.

2.4 Voice Services. Customer wishes to avail of Voice Services from a provider referred by GENBAND. In order to facilitate Customer's requirements, GENBAND and the designated Voice Services provider have agreed that this Agreement will include the relevant terms and conditions for Customer's purchase of or onward sale of

Voice Services to be provided by the Voice Services provider. The specific terms set out for Voice Services are set out in Appendix E for the Voice Services provider identified therein. Customer agrees to comply with such terms and be bound by such terms relating to the Voice Services. The Voice Services provider has authorized GENBAND to present these terms and conditions to the Customer and also has authorized GENBAND to forward the provider's billing information for Voice Services as an invoice and for GENBAND to receive Customer's payment for such Voice Services. The Customer acknowledges and agrees that in order to enable the provision of Voice Services under this arrangement, it will be necessary for GENBAND and provider to exchange information, including Confidential Information by way of example, financial information, payment performance information, this Contract and business development information, and expressly consent to such exchange of information. For purposes of the Voice Services, Customer and the provider shall have the direct rights of enforcement in respect of the Voice Services as set out herein.

3. CUSTOMER'S RESPONSIBILITIES AND USE LIMITATIONS.

3.1 Customer shall ensure that it, its End Users and all third parties with whom Customer engages in business in relation to the provision of Services, if any, will use the Service only in compliance with: (i) the terms and conditions set forth in this Appendix D and any applicable Appendix; (ii) GENBAND's Acceptable Use Policy found at www.kandy.io/acceptable-use and GENBAND's Privacy Policy found at www.kandy.io/privacy-policy and (iii) all applicable local, state, federal, and foreign laws and regulations including, without limitation, policies and laws related to intellectual property, consumer and child protection, obscenity, defamation or privacy (including, without limitation, any European privacy laws and laws relating to the recording of communications, including, when required, advising all participants in a recorded meeting or event that the meeting or event is being recorded), and export control laws. KBS Services alone do not support or facilitate calls to or from emergency services such as public safety answering points, medical care units, hospitals, fire departments, or law enforcement agencies ("Emergency Services"). Such Emergency Services functionality is available through the Atmosphere® Emergency Services if ordered by Customer and subject to the terms and conditions unless provided for in the Atmosphere® Emergency Services schedule. Accordingly, where Customer does not so order and use the Atmosphere® Emergency Services, it is Customer's responsibility to inform End Users that Emergency Services are not in the scope of the Services provided hereunder and that it is the End Users' obligation to use standard mobile or fixed line services to access Emergency Services.

Where Customer orders Atmosphere® Emergency Services pursuant to Appendix E, Customer shall work with GENBAND to include for 911 dialing, at a minimum the following:

- A) Customer and/or its End User setting up the device parameters in the phones (e.g., Digit map) to allow 911 dialing;
- B) Customer coordinating and effectuating translations via the initial Customer Information Questionnaire (CIQ) or future customer support ticket in the Kandy Business Solutions (KBS) call server; and
- C) Customer coordinating and effectuating the registration of address to a Public Safety Answering Point (PSAP) of the applicable phone number(s) with the PSTN carrier or, as applicable, the Voice Services Provider.

3.2 It is Customer's responsibility to ensure that Customer and End User has the right to use the Service in compliance with the applicable laws. For the avoidance of doubt, Customer is GENBAND's customer-of-record for all Services, and End Users are deemed to not be Customers under the Contract. In addition, Customer shall be responsible for: (i) communicating with its End Users and (ii) providing all support to its End Users, and submitting trouble tickets with GENBAND for any support for Customer. Customer further represents that the Service shall not be used for or in connection with nuclear activities, the development of biological or chemical weapons, missiles, unmanned aerial vehicles, to support terrorist activities, organized crime or in any other way that would violate U.S. export controls or economic sanctions laws. Customer agrees to promptly notify GENBAND and cease use of the Service if Customer discovers that any of the foregoing conditions apply. Customer will be responsible and liable for any and all access to and use of the Service by any person logging in under a user ID registered under Customer's account or providing and/or receiving Customer Data or other information through the Service. Customer acknowledges that Customer's access to information, including user IDs and passwords, will be Customer's "key" to the Service and, accordingly,

Customer will be responsible for maintaining the confidentiality and security of such access information (including each user ID and password). Customer will: (i) notify GENBAND immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) immediately terminate access to the Service for any person or entity who Customer suspects or knows has committed a security breach; (iii) distribute any and all documents and media connections associated with the Services to End Users with all proprietary notices intact as provided by GENBAND. Customer will take all steps reasonably requested by GENBAND to inform End Users of any applicable restrictions and limitations regarding the use of the Services; (iv) report to GENBAND immediately and use reasonable efforts to stop immediately any copying or distribution of GENBAND Technology that is known or suspected by Customer or End Users; and (v) not impersonate another GENBAND authorized user or provide false identity information to gain access to or use the Service; and (viii) use only the Software and/or Services, including any features, available within the scope of the License that Customer purchases. In the event of a security threat ("Threat"), GENBAND may, if necessary, limit or suspend immediately any GENBAND Services without liability if reasonably necessary to prevent any harm to GENBAND or to Customer. GENBAND will provide notice of such limitation or suspension as practicable depending on the nature of the Threat giving rise to the suspension. Customer shall follow all instructions provided by GENBAND for the purpose of mitigating the effects of such Threat. Such instructions may include requirements to notify End Users of the extent of such Threat.

3.3 Customer Data. Customer grants GENBAND and its subcontractors a non-exclusive, worldwide, royalty-free, paid-up, non-transferable (except as provided under an authorized assignment), sub-licensable, limited right and license to host, cache, copy, process, store, display and retrieve information associated with the Customer Data for the purpose of and in conjunction with Customer's use of the Service. Customer warrants that Customer and each End User is authorized to transfer Customer Data to GENBAND and to process the Customer Data as contemplated by the Services and in compliance with applicable laws in any location in which GENBAND or its Affiliates or subsidiaries operate. GENBAND is a data processor (or sub-processor) acting on Customer's behalf and Customer appoints and authorizes GENBAND and its Affiliates and subsidiaries (and their successors and assigns, contractors and business partners) to transfer to, store and process Customer Data in any country where GENBAND uses facilities in connection with the Service in order to provide the Service to Customer. Customer acknowledges and agrees that GENBAND may, in performing its obligations pursuant to the Contract, be dependent upon or use Customer Data, material and other information furnished by Customer without any independent investigation or verification thereof, and that GENBAND shall be entitled to rely upon the accuracy and completeness of such information.

3.4 Back Ups. Except as set forth in an Appendix, GENBAND will not have any obligation to provide Customer or End Users with any backup of Customer Data or Output, if any, nor will GENBAND be responsible for storing or maintaining any such data except as needed by GENBAND in order for perform basic functionality. Customer agrees to monitor the created, inputted or generated Customer Data and/or Output, and to create backups for both archival and emergency recovery purposes on a regular basis.

4. INTELLECTUAL PROPERTY RIGHTS. Except as expressly set forth in Section 3 (Customer's Responsibilities and Use Limitations) above, as between GENBAND and Customer, Customer owns all Customer Data. GENBAND and/or its licensors own and will continue to own all right, title and interest, including all related Intellectual Property Rights, in and to the Service, the GENBAND Technology, including without limitation the Software Development Kits (SDKs) and Application Programming Interfaces (APIs), the Documentation and GENBAND's Confidential Information Customer acknowledges that the GENBAND name, the GENBAND logo, and the product names associated with the Service are trademarks of GENBAND or third parties, and no license to such marks is granted herein. Customer acknowledges and agrees that (i) access to the Service by Customer is subscription-based, not sold, and Customer acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Service, and (ii) the Service is offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of the Service or the GENBAND Technology itself. To the extent Customer incorporates into the Output any of its Pre-Existing IPR, Customer shall continue to own such Pre-Existing IPR and Customer agrees not to assert any of its Intellectual Property Rights which arise from or relate to Customer's development of Output against GENBAND or any third party with respect to any GENBAND product or GENBAND's customers' products created using the Service provided hereunder. Notwithstanding the foregoing, such non-assertion restriction shall not limit Customer's right to assert against GENBAND or third parties any claims of infringement or misappropriation of Customer's Pre-Existing IPR or Customer IPR created independently from the use of the Software or Tools to the extent that such IPR is incorporated into Output by GENBAND or such third parties. Nothing in this Appendix D or the Contract shall grant to Customer or its End Users any rights or license to use any Pre-Existing IPR, Intellectual Property Rights and/or Confidential Information of GENBAND, except as expressly set forth in this Appendix D or the Contract.

5. INTENTIONALLY DELETED.

6. EQUIPMENT. Customer is responsible for obtaining and maintaining any equipment and ancillary services such as establishing, maintaining and supporting all connectivity and access to GENBAND's servers, systems and network (including the payment of any additional fees therefore) needed to connect to, access or otherwise use the Service (and, to the extent applicable, the GENBAND Technology), including, without limitation, video-enabled devices, video communication services, modems, hardware, servers, software, operating systems, networking, web servers, internet and telephone service (collectively, "Equipment"). Customer shall comply with any and all reasonable instructions and requirements provided by GENBAND with respect to procedures and requirements for such access. Customer shall ensure that it and all third parties with whom Customer engages in business in relation to the provision of Services comply with all applicable laws.

7. THIRD PARTY APPLICATIONS. If Customer installs or enables any third party applications for use in connection with the Services, Customer acknowledges and agrees that GENBAND may allow the applicable third party to access the Customer Data as required for the interoperation of such third party applications with the Services. GENBAND will not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access.

8. ORDERING AND PAYMENT.

8.1 Orders. Customer may order Services pursuant to this Appendix D by submitting a Sub Authority for Expenditure ("SAFE") to GENBAND. Where such Services are ordered hereby for a period or volume commitment, such ordered Services are non-cancellable unless otherwise expressly agreed in writing by the parties hereto. In the event that the Agreement or this Appendix is terminated or expires other than for cause, the terms and conditions thereof shall be nevertheless deemed to be in full force and effect solely for purposes of effectuating the continuation of such Services for the remainder of that commitment.

8.2 Fees; Invoicing; Payment. Customer will pay all fees or charges as set forth in Appendix B invoiced by GENBAND. Amounts are due and payable within thirty (30) days following the date of GENBAND's invoice therefor. Except as otherwise mutually agreed to in writing or as set forth in an Appendix, payment obligations are non-cancelable and fees paid are fully earned and non-refundable. All amounts payable will be made without setoff or counterclaim.

8.3 Taxes. All fees, charges and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, value-added and excise taxes and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on GENBAND's net income.

8.4 Effect of Nonpayment

Invoiced fees and charges not paid in full within thirty (30) days after the due date of the invoice may incur a service charge of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum legal rate allowed by law, whichever is lower. Customer will continue to be charged for Services during any period of suspension. Services shall not be cancelled, suspended or delayed for non-payment of any fees and charges unless explicitly set forth in this Section 8.4.

In the event of a dispute of any invoiced fees and charges, Customer will provide written notice to GENBAND of any disputed charge, including sufficient detail and documentation reasonably requested by GENBAND to efficiently resolve the dispute within sixty (60) days of the disputed Invoice Date ("Dispute Period"). The Dispute Notice will not relieve Customer of its obligation to pay all undisputed amounts to GENBAND by the invoice due date. If the Customer does not provide the Dispute Notice within the Dispute Period, Customer will be deemed to have consented to the amounts charged on the invoice, and to have waived any right to dispute the invoice.

8.4.1 The Customer and GENBAND (collectively, the "Parties") agree as follows with respect to any dispute or disagreement concerning any invoice, fees, charges or Services or component thereof or any of the transactions arising out of or contemplated by the Agreement: Subject to Paragraph 8.4.3, below, (i) GENBAND shall not interfere with the access or use by the Customer of the Services, and (ii) the Customer shall continue to make the payments for Services that are not the subject of the dispute. In addition, the Parties expressly agree that if any dispute or disagreement arises with respect to the

performance of any of either Party's obligations which would otherwise delay the schedule for either Party's performance of any of its subsequent obligations in connection with the Service, to the extent technically and operationally feasible, each Party shall proceed to the performance of such subsequent obligations according to the existing schedule as if such dispute or disagreement were non-existent.

8.4.2 At the written request of either party, the Parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Subsection 8.4.2. Each party will appoint a senior management representative who does not devote substantially all of his or her time to the performance under this Agreement. The representatives will furnish to each other all non-privileged information with respect to the dispute that the parties believe to be appropriate and germane. The representatives will negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. Formal legal proceedings for the resolution of the dispute may not be commenced until the earlier of: (i) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial submission of the dispute was made; provided, however, that a party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.

8.4.3 In no event shall GENBAND suspend, interrupt or interfere with City's access or use of the Services while the informal dispute resolution process set forth in Section 8.4.2 is being undertaken or in progress. In the event such informal dispute resolution process results in no resolution of a dispute acceptable to both Parties within the timeframe specified in Section 8.4.2, GENBAND may suspend the Services in connection with such dispute provided that GENBAND gives the City prior written notice of such suspension no less than 180 days prior to the date Services are proposed to be suspended. The City reserves all legal and equitable rights and remedies it may have in connection with the suspension of the Services.

9. TERM AND TERMINATION.

9.1 Term. Intentionally deleted.

9.2 Effect of Termination; Survival. Upon the expiration or termination of any Subscription Period or upon the termination or expiration of the Contract: (a) any amounts owed to GENBAND, will be immediately due and payable; (b) GENBAND's obligation to provide the Service and GENBAND Technology, and Customer's and End User's right to access or use the foregoing, will terminate; (c) Customer shall delete any Output, code or other developments created by Customer using the Service which are not proprietary to or are not perpetually licensed to Customer; and (d) Sections 4 (Intellectual Property Rights), 11 (Indemnification), 12 (Limitation of Liability), 13 (Confidentiality), 18 (Notice) and 19 (General) will survive. GENBAND's termination rights hereunder or any applicable Appendix shall be in addition to and not in lieu of any legal or equitable remedies available to GENBAND. Each party will promptly return to the other party all Confidential Information of the other party in its possession or control, or provide the other party with a written certification, of the destruction of such Confidential Information. This requirement shall not apply to backup files of data that may be under GENBAND's control (as applicable) or Customer's control.

10. WARRANTIES AND DISCLAIMER

10.1 Warranty. GENBAND warrants the Service to perform in accordance with GENBAND's published Documentation as long as a SAFE is in effect. GENBAND's responsibility under these warranties with regard to the Service shall be, after receiving written notice from Customer of a defect, to promptly correct such non-conformity or defect. If, in spite of GENBAND using commercially reasonable efforts, it proves impossible to correct the defect or non-conformity in the Service, Customer may, as its sole and exclusive remedy, cancel a SAFE or terminate the Contract or applicable Appendix without further obligation by either party. All warranties will be available during the Subscription Period (in accordance with the terms set forth herein) and will not survive the expiration or termination of the Contract or applicable Appendix or a SAFE.

10.2 WARRANTY DISCLAIMER. GENBAND, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT. GENBAND'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, PERSONAL

COMPUTERS, AND ELECTRONIC COMMUNICATIONS. GENBAND IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CUSTOMER ACKNOWLEDGES THAT (A) THE OPERATION OF THE SERVICE WILL NOT BE UNINTERRUPTED OR ERROR FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; AND (B) THE SERVICE MAY BE VULNERABLE TO FRAUD OR UNAUTHORIZED USE; GENBAND IS NOT RESPONSIBLE FOR LOSS OF INFORMATION, DELAYS IN RECEIVING OR TRANSMITTING INFORMATION, OR ERRORS IN INFORMATION COMMUNICATION, WHETHER OR NOT CAUSED BY THE SERVICE. THE SERVICES MAY BE TEMPORARILY UNAVAILABLE FROM TIME TO TIME FOR SCHEDULED MAINTENANCE OR FOR UNSCHEDULED EMERGENCY MAINTENANCE BY GENBAND OR THIRD PARTIES, OR BECAUSE OF OTHER CAUSES BEYOND GENBAND'S REASONABLE CONTROL. GENBAND WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE CUSTOMER WITH ADVANCE NOTICE OF ANY SCHEDULED MAINTENANCE WHICH WOULD AFFECT CUSTOMER'S USE OF THE SERVICE. CUSTOMER SHALL RENDER SUCH ASSISTANCE TO GENBAND AND COORDINATE WITH END USERS AS REQUESTED BY GENBAND IN SUPPORT OF MAINTENANCE ACTIVITIES. GENBAND RESERVES THE RIGHT FROM TIME TO TIME, IN ITS SOLE DISCRETION AND WITHOUT LIABILITY TO CUSTOMER, TO: (I) CHANGE, UPDATE OR TERMINATE THE VERSION OR TYPE OF GENBAND TECHNOLOGY AND/OR APPLICATIONS PROVIDED VIA THE SERVICE.

11. Intentionally deleted.

12. Intentionally deleted.

13. **CONFIDENTIALITY.** Neither party may disclose, nor permit to be disclosed, Confidential Information of the other party to any third party without the first party's prior written consent, except that either party may disclose Confidential Information solely to its employees and/or subcontractors who have a need to know and who are bound in writing to keep such information confidential pursuant to confidentiality agreements consistent with the Contract. Each party agrees to exercise due care in protecting Confidential Information from unauthorized use and disclosure, and in any case will protect the Confidential Information to the same extent used to protect its own confidential information, but in no event less than reasonable care. Notwithstanding the foregoing, GENBAND acknowledges and agrees that Customer is subject to the California Public Records Act (CPRA) and must comply with obligation thereunder and that Customer shall not be held liable by and to GENBAND for such compliance.

14. **PERSONAL DATA.** Customer represents and warrants that: (i) Customer has obtained all consents necessary for Customer transfer Personal Data to GENBAND or, as applicable, to allow GENBAND to process, store and access such Personal Data, as a data processor, (ii) the transfer of Personal Data to GENBAND does not violate applicable law or Customer's privacy policy, (iii) any instructions given by Customer to GENBAND for the processing of Personal Data do not violate applicable law or Customer's privacy policy.

15. **U.S. GOVERNMENT.** Services and documentation related thereto acquired with United States Government funds or intended for use within or for any United States federal agency are provided with restricted rights in accordance with Federal Acquisition Regulation 52.227.19 or as set forth in the particular department or agency regulations or rules of particular contract which provides GENBAND equivalent or greater protection. If Customer is a branch agency or instrumentality of the United States Government, the following provision applies: The GENBAND Technology and Documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 22.7202-3.

16. **EXPORT AND TRADE COMPLIANCE.**

16.1 Customer acknowledges that the Services may be subject to import and export controls laws and regulations of the United States and other foreign governments. Customer shall comply with such laws and regulations and agree to obtain all required U.S. or foreign government authorizations or licenses prior to exporting, re-exporting or transferring Services. Customer shall not divert, re-route, or otherwise deliver Services to destinations subject to embargoes or sanctions under US law or any known person or entity on a restricted or denied party list.

16.2 Customer shall maintain a record of exports, re-exports, sales, re-sales, transfers, and re-transfers of Service undertaken by Customer for a period of five years from the import dates or the period required by applicable laws or regulations, whichever is longer. Customer agrees to permit audits by or on behalf of the government officials as may be required under the applicable laws and regulations. Software which may be download or accessed by Customer or End User may be categorized as a “deemed export” pursuant to U.S. law. Accordingly, if Customer exports or re-exports any Software or GENBAND Technology to countries outside the United States, then prior to doing so, Customer shall notify GENBAND and GENBAND shall provide Customer an End User Certificate and Enhanced Proliferation Control Initiative (“EUC EPCI”) document which Customer shall review, execute and provide to GENBAND.

16.3 Each party will not directly or indirectly, offer, promise, grant, give, request, agree to receive or accept, anything of value to or from anyone—including representatives of non-government owned commercial enterprises and government officials—in order to gain an improper, illegal or unethical advantage (such as the acquisition or retention of business or other business advantage) or to encourage a government official to perform an official function or to obtain an improper advantage in violation of the United States Foreign Corrupt Practices Act (“FCPA”) (Pub. L. No. 95-213, 94 Stat. 1494 [and any amendments thereto]) or the UK Bribery Act of 2010.

16.4 The Services offered as part of the Contract are subject to all relevant United States export control laws and regulations. By using this Service, Customer represents and warrants that Customer: (i) are not listed on the U.S. Commerce Department's Table of Denial Orders, the U.S. Treasury Department's lists of specially designated nationals, or otherwise denied the privilege of participating in transactions involving the export of U.S.-origin products and services; (ii) are not located in a country that is subject to embargo by the United States (currently the Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria); (iii) are not engaged, directly or indirectly, in the design, development, production, stockpiling, or use of nuclear, chemical, or biological weapons or missiles; and (iv) will not, without prior authorization from the Bureau of Export Administration, (a) knowingly re-export the technical data received from GENBAND to any destination or (b) export the direct product of the technical data, directly or indirectly, to a country listed in Country Group D:1 or E:2 in Supplement No. 1 to Part 740 of the Export Administration Regulations (Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Libya, Lithuania, Macau, Moldova, Mongolia, North Korea, People's Republic of China, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam).

17. TRADEMARKS AND BRANDING. Unless directed by GENBAND in writing, neither Customer nor any End User shall use GENBAND's trademarks, service marks, logos, brands or references to same in its marketing, sales, distribution and representations to third parties. Customer shall use its own non-conflicting trademarks, logos, brands and other representations (“Marks”) in relation to its delivery of Services and Customer shall ensure that such Marks do not present the Services or GENBAND's role in the provision of such Services negatively or in a derogatory manner. Customer and End User shall cease use of such Marks immediately if GENBAND notifies Customer of GENBAND's objection to the use of such Marks for the foregoing reasons.

18. NOTICE.

18.1 Notices to Customer. GENBAND may, from time to time, provide Customer notices concerning its use of the Service on the Service portal. Such notices include but are not limited to planned downtime, unplanned downtime or account notifications. Customer acknowledges that such notices may be the sole and exclusive notice Customer receives from GENBAND regarding the Service and that GENBAND shall have no liability to Customer for Customer's failure to acknowledge and/or implement. Notices to Customer will be sent to the individuals identified in Section IV of the Contract.

18.2 Notices to GENBAND. Notices to GENBAND will be sent to the individuals identified in Section IV of the Contract.

19. GENERAL.

19.1 Force Majeure. Except for payments due under the Contract, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance.

19.2 No Partnership. The parties are independent contractors. No joint venture, partnership, employment, or agency relationship exists between Customer and GENBAND as a result of the Contract or use of the Service.

19.3 Waiver, Amendment and Severability. No modification hereof will be effective unless in writing and signed by both parties. If any provision or provisions of the Contract shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

APPENDIX E

VOICE SERVICES APPENDIX General Terms

This Voice Services Appendix is effective as of the date the Contract is last signed ("Appendix Effective Date") for purchase of Voice Services (defined below), and is incorporated by reference into the Kandy Subscription Services Appendix D. The Voice Services Provider has authorized GENBAND to present these terms and conditions to the Customer. All terms used here are as defined in the Appendix D unless specified otherwise. In the event of a conflict between the terms and conditions of the Appendix D and this Voice Services Appendix, the terms of the Voice Services Appendix will supersede those of the Appendix D. Except to the extent expressly superseded by terms of this Appendix, references in the Appendix D to (i) GENBAND will be applicable to Voice Services Provider with regard to Voice Services, and (ii) Services will be applicable to Voice Services. For purposes of the Voice Services, Customer and the Voice Services Provider shall have the direct rights of enforcement in respect of the Voice Services as set out herein.

General Voice Services Terms and Conditions

1. **DEFINITIONS.** For purposes of this Voice Services Appendix, the following terms will have the following meanings:

- 1.1 **"Rate Notification Delivery Address"** means the email address at which Voice Services Provider will notify Customer of any changes to Rates, which will be _____, or as updated from time to time in the Customer portal.
- 1.2 **"Voice Services"** means the voice communications services provided to Customer by the Voice Services Provider as set out in this Appendix and the Voice Services Service Description and Terms. For greater certainty, Voice Services do not include GENBAND's Services. The Customer shall be entitled to order and avail of the Voice Services as set out in this Appendix, and may amend the Voice Services Appendix as necessary to add additional Voice Services.
- 1.3 **"Voice Services Order Form"** means the order forms or portal access provided by Voice Services Provider to enable Customer to order Voice Services, including any supporting documents, including without limitation a letter of authorization ("LOA").
- 1.4 **"Voice Services Provider"** means the Voice Services Provider approved by Genband to provide the Voice Services as provided for herein. For greater certainty, the following entity is initially designated as a Voice Services Provider: IntelPeer Cloud Communications LLC, a Delaware limited liability company with its registered address at: 177 Bovet Road, Suite 400, San Mateo, CA 94402. An alternate Voice Services Provider may be designated by mutual written agreement.
- 1.5 **"Voice Services Service Descriptions and Terms"** means the description of the Voice Services available under this Appendix, along with the terms setting forth each Parties' responsibilities.

2. VOICE SERVICES

2.1 **Service Descriptions and Terms.** Voice Services Provider will provide Customer with the Voice Services, as specified in the Voice Services Service Descriptions and Terms, to route communications, including associated applications and content ("Traffic"), as services are available, in a commercially reasonable manner consistent with industry standards and the terms herein and in Appendix D. Nothing in this Appendix or Appendix D will inhibit the right of Voice Services Provider to deploy, upgrade, migrate and maintain its network or Voice Services in its sole discretion. Voice Services Provider will send Customer an email notification that the Voice Services are available ("Service Activation Notice"), and will coordinate with Customer to sufficiently test these Voice Services. By executing the Contract including this Appendix and as a condition of ordering any Voice Services, Customer agrees to be bound by the terms and conditions set out in the Voice Services Service Descriptions and Terms for the following Voice Services, which Customer acknowledges are incorporated by reference into this Appendix and may be revised by Voice Service Provider without notice from time to time. For Intelpeer, the Voice Services Service Descriptions and Terms for each of the available Voices Service can be found, respectively, at:

- **Atmosphere® Outbound Voice Services** at www.intelepeer.com/terms/atmosphere-outbound-services/
- **Atmosphere® Inbound Voice Services** at www.intelepeer.com/terms/atmosphere-inbound-services/
- **Atmosphere® Toll Free Services** at www.intelepeer.com/terms/atmosphere-toll-free-services/
- **Atmosphere® Emergency Services** at www.intelepeer.com/terms/atmosphere-emergency-services/
- **Atmosphere® UC SIP Service Bundles** at www.intelepeer.com/terms/atmosphere-bundles/

▪ **Service Level Agreement** at www.intelepeer.com/terms/atmosphere-slas/

2.2 Interconnection. Each Party will use commercially reasonable efforts to coordinate the identification, investigation, and migration of real-time Traffic flow problems and assist with the isolation and repair of any network failure, but will have no responsibility or liability related to the other Party's facilities or networks under any circumstances

2.3 Network and Traffic Integrity.

2.3.1 Voice Services Provider reserves the right, in its sole discretion and without liability, to temporarily suspend any Voice Services if Voice Services Provider reasonably suspects that Customer is engaged in an activity, which may potentially disrupt or harm Voice Services Provider's network or facilities. Voice Services Provider will use commercially reasonable efforts to provide advance written notice of suspension.

2.3.2 Voice Services Provider provides its Voice Services subject to the condition that Customer will not use the Voice Services for any unlawful purposes. Voice Services Provider reserves the right, in its sole discretion and without liability, to temporarily suspend or permanently terminate any Voice Services, in whole or in part, and initiate any other appropriate action to minimize risk of fraud and protect Customer and Voice Services Provider, if Voice Services Provider determines or reasonably suspects: (i) fraud, abuse or misuse on Customer's account; (ii) an unusually high volume of calls to invalid destinations, of a duration of less than twelve (12) seconds, or with high attempted calls-per-second on Customer's account in any twenty-four (24) hour period; (iii) use of the Voice Services violates any applicable law; or (iv) if Customer does not maintain a minimum of 100 minutes of usage after ninety (90) days after the Appendix Effective Date. Voice Services Provider will provide written notice of suspension or termination as soon as commercially reasonable, and will work with Customer to determine the validity of any such activity.

2.3.3 Each Party agrees to (i) not alter, conceal, modify, delete, re-originate or re-classify originating calling party information, originating ANI, originating point codes, nature of address, other signaling information, or call detail in any manner; or (ii) not make long distance traffic appear to be local traffic or local traffic appear to be long distance traffic. Any violation of this Section constitutes a material breach of the Agreement.

2.3.4 Customer agrees to assume sole responsibility for any and all Traffic sent from Customer's connection to Voice Services Provider, including without limitation any instances in which a third party hacks into Customer's network to send traffic to any destinations with increased risk of fraudulent traffic. To mitigate the risks associated with such events, Customer will notify Voice Services Provider immediately of any unauthorized use of Customer account or other breach of security.

2.4 Ordering. Customer may either order Voice Services through GENBAND or directly from Voice Services Provider. To the extent Customer orders Voice Services through GENBAND, by executing the Contract including this Appendix, Customer expressly authorizes GENBAND to order such Voice Services in the portal of the Voice Services Provider on Customer's behalf. All Orders for Voice Services will be submitted via the online portal referenced in the Voice Services Appendix. By placing any Order, Customer agrees to be bound by the terms and conditions of this Appendix, Voice Services Service Description and Terms, and the current Solutions Summary.

3. BREACH

3.1 Customer's Material Breach. Upon any uncured material breach by Customer, or failure by Customer to make undisputed payments within twenty (20) days ("Remedy Window") of the Due Date as defined in Section 4, Voice Services Provider and GENBAND will have the additional option following any applicable cure period that has run, to immediately: (i) cease accepting or processing orders for the Voice Services; (ii) cease generating call detail information for Customer; (iii) enforce any security interest or assurance provided by Customer; (iv) suspend the Voice Services, in whole or in part, without liability and (v) pursue such other appropriate legal or equitable remedy or relief. For avoidance of doubt the Voice Services Provider and GENBAND will not exercise any of the foregoing remedies on disputed amounts withheld on Disputed Invoices pursuant to Section 4.5, prior to the resolution and the expiration of the adjusted Due Date (as set forth in Section 4.5.3). In the event that Customer fails to make payment of its undisputed invoices by the Due Date as defined in Section 4 two or more times within a twelve (12) month period of time, then for purposes of this Section 3.1, the Remedy Window as defined above shall be deemed to be revised for the remainder of the term of this Agreement to be ten (10) days, and Voice Service Provider may request an escalation pursuant to the dispute resolution process set forth in Section 4.5.2.

4. RATES

4.1 Rates. Voice Services Provider will provide the rates for Voice Services in Appendix B ("Rates"), and, the associated methodology for calculating those Rates ("Rating Methodology") for Voice Services. Such Rates identified as being for domestic traffic shall not be increased during the first thirty-six (36) months that the Agreement is in effect ("Rate

Lock"). To initiate a change in Rates for international traffic at any time during the duration of this Contract, or for domestic traffic after the Rate Lock expires, Voice Services Provider will notify Customer via email to the Rate Notification Delivery Address provided in Section 1 at least thirty (30) days prior to the intended effective date ("Rate Notification"), which GENBAND agrees to follow up by written notification to Customer. Customer agrees to be bound by the then-effective Rate Notification. Customer's delivery of Traffic to Voice Services Provider after the effectiveness of a Rate Notification as provided for herein will be deemed acceptance by Customer of the changes to the Rates.

In partial consideration for such Rate Lock, Customer must schedule all number porting with the Voice Services Provider to be undertaken in blocks of no less than one-hundred (100) numbers for each such porting event. If Customer desires to port numbers in blocks less than one-hundred (100) at a time, then Customer shall request such porting of the Voice Services Provider and the Voice Services Provider shall provide a quote for the incremental services charges, if any that will be required for such porting of less than one-hundred (100) number blocks. Customer shall be invoiced and shall pay such service charges pursuant to Section 4.3, below.

4.2 Intentionally Omitted.

4.3 Billing Terms. On the issuance date of the Service Activation Notice, the Voice Services Provider has authorized GENBAND to initiate billing, and collect Customer's payment, for the Voice Services pursuant to the terms of the applicable Voice Services Service Description and Terms. Customer will be responsible for all undisputed charges on its account after the Service Activation Notice. GENBAND will bill Customer monthly for the applicable month of Voice Services, either in advance or arrears pursuant to the Voice Services Service Description and Terms ("Invoice Date"). Undisputed amounts are due and payable thirty (30) days following the date the Invoice is received ("Due Date"). Customer will pay GENBAND pursuant to the terms of this Appendix.

4.4 Late Payments. Voice Services Provider reserves the right to impose a late payment charge on undisputed amounts not paid to GENBAND twenty (20) days following the Due Date, in the amount of one and one-half percent (1.5%) per month compounded monthly, or the maximum rate allowable by law, whichever is less.

4.5 Disputed Invoices. Customer will provide written notice to Voice Services Provider of any disputed charge, including sufficient detail and documentation reasonably requested by Voice Services Provider to efficiently resolve the dispute ("Dispute Notice"), within sixty (60) days of the Invoice Date ("Dispute Period"). The Dispute Notice will not relieve Customer of its obligation to pay all undisputed amounts to GENBAND by the Due Date, and will not change the termination or suspension rights Voice Services Provider otherwise has under this Agreement. If Customer does not provide the Dispute Notice within the Dispute Period, Customer will be deemed to have consented to the amounts charged on the invoice, and to have waived any right to dispute the invoice.

4.5.1 Customer, Voice Services Provider and GENBAND (collectively, the Parties) agree with respect to any Disputed Invoice that this Section 4.5 will govern the process for addressing such matters. While the process set forth in Subsection 4.5.2 below is underway or any formal proceeding to resolve such dispute pursuant to Subsection 4.5.2, pending final resolution of such dispute or disagreement, (i) Voice Service Provider or GENBAND shall not interfere with the access or use by the Customer of the Voice Services as a result of the non-payment of the disputed amounts, though nothing in this Section will prohibit any Party from exercising its rights provided under Section 3 of this Addendum as to matters not related to the disputed amounts and (ii) the Customer shall continue to make the payments for all undisputed amounts for Voice Services that are not the subject of the dispute. In addition, the Parties expressly agree that if any dispute or disagreement arises with respect to the performance of any Party's obligations which would otherwise delay the schedule for any Party's performance of any of its subsequent obligations in connection with the Voice Services, to the extent technically and operationally feasible, each Party shall proceed to the performance of such subsequent obligations according to the existing schedule as if such dispute or disagreement were non-existent.

4.5.2 At the written request of any Party, the Parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Subsection 4.5.2. Each party will appoint a senior management representative who does not devote substantially all of his or her time to the performance under this Agreement. The representatives will furnish to each other all non-privileged information with respect to the dispute that the parties believe to be appropriate and germane. The representatives will negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. Formal legal proceedings for the resolution of the dispute may not be commenced until the earlier of: (i) the designated representatives conclude that resolution through continued negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial submission of the dispute was made; provided, however, that a party may file earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.

4.5.3 In no event shall the Voice Services Provider or GENBAND suspend, interrupt or interfere with Customer's access or use of the Voice Services for Customer's failure to pay Disputed Invoices, while the informal

dispute resolution process set forth in Section 4.5.2 is being undertaken or in progress. Upon resolution of a Disputed Invoice, the Voice Services Provider will issue a written resolution of the dispute to the Customer and GENBAND, at which point the Customer will have thirty (30) days to pay any outstanding balance of the disputed amounts, which will be the adjusted Due Date for those amounts. In the event such informal dispute resolution process results in a resolution of the dispute that is unacceptable to the Customer, the Customer may exercise any legal and equitable rights and remedies it may have in connection with such disputes and, in that event and provided that the aggregate amount of all disputed invoices that remain unpaid do not exceed twenty-thousand dollars (\$20,000.00) Voice Services Provider shall not suspend or terminate the Voice Services solely on the basis of its legal and equitable rights and remedies with respect to such aforementioned disputed invoices.

4.6 Taxes. Customer will pay all sales, use and excise taxes, as well as all regulatory surcharges, customs and duties assessed from any domestic or international jurisdiction due or payable upon the provision, sale or use of Voice Services under this Appendix ("Taxes"). Unless Customer provides Voice Services Provider with sufficient written documentation, including, but not limited to, tax exemption certificates, reseller certifications, and copies of receipts of any such foreign taxes paid, Customer will be responsible for paying all applicable Taxes. In no event will Voice Services Provider be liable for any claims arising from, or in connection with, Customer's failure to pay any taxes owed by Customer in any jurisdiction.

4.7 Rounding. Where applicable, Voice Services Provider will round the rated amount applied on a per call basis up to the nearest one one-hundredth (1/100) of a cent, which is 4 decimal places or .XXXX. For illustration purposes only, a per-minute Rate of \$ 0.00018 would be rounded to \$ 0.0002.

4.8 Collections. Customer and Voice Services Provider consent exclusively to the jurisdiction and venue of any competent court in the Southern District of California for any collection action for Voice Services arising under this Appendix or Appendix D, and expressly waive any right to a jury trial. In the event of any collection action related to Voice Services under this Appendix or Appendix D, the prevailing party shall be entitled to all reasonable and documented attorneys' fees, costs, and expenses relating to the matter regardless of whether the Contract or any relevant provision is held to be invalid.

4.9 Intentionally Omitted.

4.10 Transition Support. Subject to Customer's continued compliance with its obligations under this Agreement, if Customer requests that its Voice Services be transitioned to an alternate service provider, then Voice Services Provider shall provide reasonable cooperation in conjunction with such transition, provided that such transition is completed within one-hundred eighty (180) days of Customer invoking such transition.

5. INAPPLICABLE PROVISIONS OF APPENDIX D. THE FOLLOWING SECTIONS OF THE APPENDIX D DO NOT APPLY TO VOICE SERVICES UNDER ANY CIRCUMSTANCES: SECTIONS 10.1 (WARRANTY), AND 15 (US GOVERNMENT).

6. Proprietary Rights. The Customer acknowledges and agrees that in order to enable the provision of Voice Services under this arrangement, it will be necessary for GENBAND and Voice Services Provider to exchange information, including Confidential Information by way of example, financial information, payment performance information, the Contract, this Appendix and business development information, and expressly consent to such exchange of information. Section 3.1(ii) of Appendix D will not apply to Voice Services, and instead Customer will ensure that it, its End Users and all third parties with whom Customer engages in business in relation to the provision of Voice Services, if any, will use the Voice Services only in compliance with the applicable Voice Services Provider Proprietary Policy. With respect to Intelepeer, such policy is accessible at <http://www.intelepeer.com/terms/customer-privacy-policy/>.