



AGENDA REPORT

Meeting Date: December 5, 2013
Item Number: D-8
To: Honorable Mayor & City Council
From: David L. Snowden, Chief of Police
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND TRACSTAR SYSTEMS, INC. D.B.A. COBHAM SATCOM FOR PURCHASE OF THE WAVE COMMUNICATION SYSTEM AND RELATED SERVICES; AND

AUTHORIZING A PURCHASE ORDER WITH TRACSTAR SYSTEMS, INC. D.B.A. COBHAM SATCOM IN AN AMOUNT NOT TO EXCEED \$51,000; AND

AUTHORIZING A PURCHASE ORDER WITH CDW GOVERNMENT LLC IN AN AMOUNT NOT TO EXCEED \$27,000

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council move to authorize an agreement between the City of Beverly Hills and TracStar Systems, D.B.A. Cobham SATCOM, for the purchase and installation of the Wave communication system and approve a purchase order in an amount not to exceed \$51,000 for the system and services. Additionally, staff recommends that the City Council approve a purchase order to CDW Government LLC in an amount not to exceed \$27,000 for the server hardware and software infrastructure for the system.

INTRODUCTION

The Beverly Hills Police Department (PD) is requesting purchase of the Wave communication system to streamline radio interoperability and to enhance Officer safety. The system uses relatively recent radio-over-internet-protocol (RoIP) technology that leverages existing hardware to link back-end infrastructure with the land mobile radio (LMR)

network, providing new levels of first responder interoperability capabilities, including radio integration with smartphones.

DISCUSSION

The PD continuously conducts research and tests technology that will enhance public safety capabilities, reduce call response times, enhance services to the public, and provide Officer safety support. After extensive research and testing of various RoIP technology solutions, staff found that the Wave Mobile Communicator solution offered by Cobham SATCOM was specifically tailored for use by public safety, augmenting and extending critical voice communications by enabling smartphones and other specialty purpose devices to securely communicate with any other communication system. Cobham SATCOM has provided the City with the opportunity to pilot-test its product over the past year in order to ensure the solution meets the Police Department's needs. Key features of the system include:

- Instant communication through the City's secure radio system via smartphone, tablet or computer;
- Extension of the range for the current LMR system using and cellular carrier network, providing Officer access to the City's radio system from anywhere where there is cell coverage;
- Allows the Officer to maintain radio contact with Police Dispatch 24/7 without the bulkiness of carrying a full size portable radio;
- Enhances Officer safety in surveillance situations where the Officer appears to be talking on the phone rather than using a police radio;
- Allows the Officer to pre-select the City's Police radio channel to be affiliated with the Wave system for quick connection;
- Includes a mapping feature to instantly display each Officer's location, further contributing to Officer safety; and
- Provides compatibility with Apple, Android and Windows platforms.

The Wave Mobile Communicator system is a proprietary technology developed by Twisted Pair Solutions. Cobham SATCOM is an authorized reseller of this technology and will provide both the software and professional services necessary for the City to utilize this technology. As such, an RFP was not issued for this project.

In addition to the public safety focus of the Wave Mobile Communicator system features identified above, staff recommends Cobham SATCOM as the system provider because this consultant caters to public safety in its service, support, and implementation strategy approaches. Cobham SATCOM has a proven record of providing state-of-the-art technologies, designing affordable, highly reliable, high-performance public safety systems that are cost efficient and sustainable. Cobham SATCOM is familiar with the City's public safety communications needs and has provided satellite telephone systems in the Library, Emergency Operations Center (EOC), and the Mobile Advanced Technology Control Center (MATCC) vehicle. Additionally, Cobham SATCOM provides 24/7 support catered to the

“around-the-clock” nature of public safety services, specifically Police Dispatch, and has included extended 3-year warranty and support services into the cost of the system.

To ensure optimal efficiency, the PD worked diligently with the Information Technology Department (IT) to ensure that the back-end server hardware and software will be fully integrated with the City’s existing secure networking systems, to ensure scalability, supportability, and system redundancy and failover for disaster recovery and emergency operations purposes. IT provided three quotes for purchase of the infrastructure to ensure that the hardware and software are purchased at the lowest competitive price. CDW Government provided the lowest quote, and also provides pricing pursuant to a government purchasing contract which was previously bid (CMAS contract #3-99-70-0793B, expiring 1-31-14).

FISCAL IMPACT

Funding for the purchase and implementation of the Wave Mobile Communicator solution was presented as a budget enhancement, and authorized as part of the annual Budget Decision Packet on June 18, 2013. Additionally, after further research regarding back-end infrastructure compatibility with the City’s existing network infrastructure, additional funding to augment the hardware and software for optimal compatibility was approved by the City Council on November 5, 2013.

The total cost of the Wave Mobile Communicator solution, including infrastructure hardware and software, implementation services and extended 3-year warranty and support services is an amount not to exceed \$78,000:

Vendor	Description	Cost
Cobham	Mobile Communicator System, Services and 3-Year Warranty / Support	\$ 49,802.00
Cobham	Contingency Services	\$ 1,198.00
CDWG	Infrastructure – Server Hardware and Software	\$ 25,564.97
CDWG	Contingency	\$ 1,435.03
Total Not To Exceed:		\$ 78,000.00

The project is anticipated and funds for this purchase are available in the Police Department’s Special Projects Detail program account and the Seized and Forfeited Property Fund.

Funds for this project are provided as follows:

Budget Unit	Account #	Description of Fund Source/Account #	Amount
0102406	74170	Telecommunications Equipment	\$50,000.00
3202105E126	74170	Telecommunications Equipment	\$28,000.00
			\$78,000.00

Meeting Date: December 5, 2013

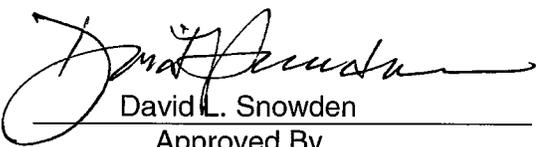


Don Rhoads
Finance Approval



David Schirmer

Information Technology Approval



David L. Snowden
Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND TRACSTAR SYSTEMS, INC. D.B.A. COBHAM
SATCOM FOR PURCHASE OF THE WAVE
COMMUNICATION SYSTEM, AND RELATED SERVICES

NAME OF CONSULTANT: TracStar Systems, Inc. d.b.a. Cobham
SATCOM

RESPONSIBLE PRINCIPAL OF
CONSULTANT: Jackie Ruble, Sales Administrator Supervisor

CONSULTANT'S ADDRESS: 1551 College Park Business Center Road
Orlando, Florida 32804

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David L. Snowden, Chief of Police

COMMENCEMENT DATE: Upon Written Notice to Proceed

TERMINATION DATE: June 30, 2014

CONSIDERATION: Not to exceed \$51,000, including \$49,802 for
the system, implementation services, and
extended warranty, and \$1,198 for
contingency as detailed in Exhibit B,
Schedule of Rates and Payment

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND TRACSTAR SYSTEMS, INC. D.B.A. COBHAM
SATCOM FOR PURCHASE OF THE WAVE
COMMUNICATION SYSTEM, AND RELATED SERVICES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "City"), and TracStar Systems, Inc. d.b.a. Cobham SATCOM (hereinafter called "Consultant").

RECITALS

A. City desires to have certain services provided related to purchase and implementation of the Wave Communication System as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein, collectively the "Services".

B. Consultant represents that it is qualified and able to perform the Services.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

Section 1. Consultant's Services. Consultant shall perform the Services described in Exhibit A, in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Term of Agreement. This Agreement shall commence upon Consultant's receipt of City's written notice to proceed, which shall be a duly authorized purchase order issued by City, and shall terminate on June 30, 2014, unless sooner terminated.

Section 3. Time of Performance. Consultant shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee.

Section 4. Compensation.

(a) Compensation. City agrees to compensate Consultant for the services and/or goods provides under this Agreement, and Consultant agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, Schedule and Rates of Payment, and Attachment 1 to Exhibit B, Consultant's Quotation, attached hereto and incorporated herein by this reference.

(b) Expenses. The amount of Consideration set forth above shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses, including travel related expenses.

Section 5. Method of Payment. Unless otherwise provided for herein, Consultant shall submit to City a detailed invoice, on a monthly basis or less frequently, for the

services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall pay Consultant said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 6. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

Section 7. Assignment. This Agreement shall not be assigned in whole or in part, by Consultant without the prior written approval of City. Any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 8. Responsible Principal(s).

(a) Consultant's Responsible Principal set forth above shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of City.

Section 9. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 10. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 11. Interests of Consultant. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Consultant.

Section 12. Insurance.

(a) Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Consultant.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Consultant in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) Consultant shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(e) At all times during the term of this Agreement, Consultant shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit D, attached hereto and incorporated herein, or on a form acceptable to the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Consultant shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates.

(f) The general and auto liability insurance shall contain an endorsement naming the City, its elected officials, officers, agents and employees, as additional insureds with respect to work under this Agreement.

(g) All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(h) The insurance provided by Consultant shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(i) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

Section 13. Indemnification.

(a) Consultant agrees to indemnify, hold harmless and defend City, its elected officials, officers, agents and employees, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless,

negligent, or otherwise wrongful acts, errors or omissions of Consultant or any person employed by Consultant in the performance of this Agreement.

(b) This Consultant indemnity is conditional on: (i) Consultant being promptly notified of any claims or demands; (ii) Consultant being granted control of the defense of any such claims or demands; and (iii) the City restricting their comments regarding such claims or demands to factual statements to Consultant's claims investigators; Consultant's, and to the extent necessary, City's insurance carriers; or any attestation of the facts during any litigation proceedings such as depositions or trial.

Section 14. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Consultant, Consultant shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

Section 15. City's Responsibility. City shall provide Consultant with all pertinent data, documents, and other requested information as is available for the proper performance of Consultant's Services.

Section 16. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Consultant and compensated by City pursuant to this Agreement as City deems appropriate.

Section 17. Intellectual Property Indemnification. Consultant agrees to indemnify, hold harmless and defend the City, City Council and each member thereof, every officer, employee and agent of City, from any liability or financial loss (including, without limitation, attorneys fees and costs) arising from or related to any claim that the software and/or hardware provided by Consultant infringes upon any copyright, trade secret, trademark, patent or other proprietary or intellectual property right of any third party. This indemnity provision shall survive termination of this Agreement.

Section 18. California Public Records Act Notice. Consultant acknowledges that City is subject to the California Public Records Act (the "Act") and that some or all of the Proprietary Information (collectively "information") provided by Consultant may be disclosable thereunder. In the event a public records act request for Consultant's information is received, City shall use its best efforts to provide Consultant with written or verbal notice of such request, prior to compliance. However, nothing herein shall prevent City from complying with the requirements of the Act. In the event City determines that any documents containing Consultant's information are not disclosable, and litigation is commenced to compel production of such documents, Consultant agrees to defend and indemnify City, with counsel of City's choice, as to any claims, liabilities, costs, and/or judgments that may be incurred by City as a

result of such litigation. The provisions of this section shall survive the expiration or termination of this Agreement for any reason.

Section 19. Changes in the Scope of Work. The City shall have the right to order, in writing, changes in the Scope of Services to be performed. Any changes in the Scope of Services must be made in writing and approved by both parties.

Section 20. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 21. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 22. Precedence.

(a) Except to the extent there is a conflict with the terms of the Agreement as described in this Section, TracStar Systems, Inc. Terms and Conditions are hereby attached and incorporated into the Agreement as set forth in Exhibit C.

(b) In case of conflict between the terms of the Agreement (including Exhibits A, B and D), and Attachment 1 to Exhibit A (End User License Agreement), Attachment 1 to Exhibit B (Consultant's Quotation), and Exhibit C (the TracStar Systems, Inc. Terms and Conditions for the Sale of Goods and Supply of Services), the Agreement (including Exhibits A, B and D) shall take precedence over all the other Exhibits and Attachments to the Agreement.

Section 23. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

Section 24. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 25. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Consultant.

Section 26. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any

of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the ____ day of _____ 201__, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk (SEAL)

CONSULTANT: TRACSTAR SYSTEMS,
INC. D.B.A. COBHAM SATCOM



DAVE PROVENCHER
President

APPROVED AS TO FORM


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager



DAVID SNOWDEN
Chief of Police



DAVID SCHIRMER
Chief Information Officer



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

Consultant shall provide City with a comprehensive radio-over-internet-protocol (RoIP) solution for the City's Police Department (the "System"). Consultant grants to City a license to use the System Software in accordance with the End User License Agreement, Attachment 1 to Exhibit A. Consultant's duties shall include installation, configuration and all necessary services to ensure the System is fully functional, including all necessary hardware, software and responsibilities identified below.

TASK 1 - PROJECT MANAGEMENT & PRE-INSTALLATION

The purpose of this Task is to identify all pre-installation items to ensure successful completion of the project and to provide effective project management to ensure a successful implementation. Consultant shall provide a Project Manager whose responsibilities shall include but are not limited to the following:

- (a) Serve as liaison between City representatives and Consultant;
- (b) Schedule and conduct conference calls and meetings with key City representatives as needed;
- (c) Conduct thorough needs assessment and requirements analysis requirements analyses;
- (d) Ensure implementation schedule is maintained and accurate, including completion of all tasks and deliverables;
- (e) Provide all necessary documentation;
- (f) Manage Consultant's technical personnel and ensure uninterrupted service delivery to the City;
- (g) Resolve any conflicts during the course of the project; and
- (h) Provide status reports to City staff as needed.

Task 2 – INSTALLATION & CONFIGURATION

The purpose of this Task is to commence installation and configuration of the System at City's site and connectivity testing to ensure correct installation and configuration. Consultant's onsite representative will work directly with City's network and database administrators to ensure a successful installation. Consultant shall provide at least one (1) technical staff member to perform onsite services until installation is complete and shall facilitate the following:

- (a) *Installation and Configuration by City:*
 - (i) City shall acquire necessary server hardware approved by Consultant.
 - (ii) City shall complete initial Operating System loads on servers and install hardware in data center.

(iii) City shall make available, on the TBD date of installation, configured server hardware and a network security administrator to facilitate network changes necessary for the operation of the new system.

(b) *Installation and Configuration by Consultant:* Consultant shall complete the following installations and configuration:

- (i) Provide City with Wave TracRoIP-W-Basic- includes 3 communication channels , complete installation, configuration and setup;
- (ii) Provide City with Wave TracRoIP-W-DS- WAVE Dispatch Communicator, complete installation, configuration and setup;
- (iii) Provide City with Wave TracRoIP-W-DC- WAVE Desktop Communicator, and complete installation, configuration and setup;
- (iv) Provide City with Wave TracRoIP-W-MCZP- WAVE Mobile Communicator (Any Platform) Includes P2P Feature License
- (v) Provide City with Wave TracRoIP-W-WC- WAVE Web Communicator and complete installation, configuration and setup;
- (vi) Establish with CBH IT personnel the proper backup and restoration procedures.

Task 3 - SYSTEM TESTING

The purpose of this Task is to review and conduct testing of the System. Consultant shall work with City representatives to develop and implement effective test strategies and a mutually agreeable test plan to ensure the System is fully functional in preparation for acceptance of the System, user training and go-live.

Task 4 - System Review

The purpose of this Task is to prepare for training of City users, go live, and final acceptance of the System. As part of the Project Plan, Consultant shall have produced measurable objectives by which to determine complete installation and implementation of the System. Consultant shall establish that each of the measurable objectives has been met, and that the System is fully functional to City's satisfaction.

Task 5 – PROVISIONAL ACCEPTANCE

City shall issue provisional acceptance of the System, provided that all critical errors have been corrected, and provided that the System functions according to the specifications published by Consultant. Such acceptance shall not be unreasonably withheld.

Task 6– USER & ADMINITRATOR TRAINING

The purpose of this Task is to train City users on the final product prior to go-live and final acceptance of the project. Consultant shall provide onsite training at City's designated location. Consultant shall provide training as follows:

Task 6 - Deliverables:

Training Materials: As part of training, Consultant shall provide City with any and all user manuals and/or other documentation needed for effective knowledge transfer regarding System use and onsite administration. Materials may be provided in electronic format.

Task 7 – GO LIVE

The purpose of this Task is to place the System into production and to launch the System. As part of the Project Plan, Consultant shall establish target completion dates and drop dead dates for project completion and go-live.

TASK 9 – CERTIFICATE OF COMPLETION

Upon completion of all aspects of this project, including all training and fine-tuning of the System, Consultant shall issue a Certificate of Completion to City.

ATTACHMENT 1 TO EXHIBIT A

END USER LICENSE AGREEMENT

THE ACCOMPANYING SOFTWARE AND DOCUMENTATION (EACH AS DEFINED BELOW) BELONG TO TWISTED PAIR SOLUTIONS, INC. ("LICENSOR") OR ITS LICENSORS AND ARE SUBJECT TO THIS END USER LICENSE AGREEMENT (THE "AGREEMENT"). WHEN YOU CLICK ON THE "ACCEPT" BUTTON OR WHEN YOU OR LICENSEE (AS DEFINED BELOW) OTHERWISE INSTALL OR USE ANY PART OF THE SOFTWARE OR DOCUMENTATION, (I) YOU ARE REPRESENTING AND WARRANTING THAT YOU HAVE THE AUTHORITY TO BIND LICENSEE AND (II) LICENSEE IS CONSENTING TO BE BOUND BY, AND IS BECOMING A PARTY, TO THIS AGREEMENT. IF YOU, OR LICENSEE, DO NOT AGREE TO (OR CANNOT COMPLY WITH) ALL OF THE TERMS OF THIS AGREEMENT, (1) CLICK THE "CANCEL" BUTTON AND (2) NEITHER YOU NOR LICENSEE WILL BE AUTHORIZED TO USE OR HAVE ANY LICENSE TO ANY PART OF THE SOFTWARE OR DOCUMENTATION.

IF YOU OR LICENSEE ARE DEEMED TO HAVE ORDERED THE SOFTWARE AND/OR DOCUMENTATION, LICENSOR'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS; IF THESE TERMS ARE CONSIDERED AN OFFER BY LICENSOR, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

1. Definitions. The following underlined terms shall have the following meanings:

1.1 "ARUS" means the Annual Renewal and Update Subscription offered by Licensor through the Partner, subject to the provisions of Section 6.

1.2 "Competitive Products" shall mean any product that supports the same or similar functionality as the Software.

1.3 "Documentation" means any Licensor documentation that may be provided to Licensee with the Software, including with any upgrade or update to the Software provided under ARUS. Any particular Documentation applies only to the Software with which it is provided and for which it was prepared.

1.4 "Licensee" means the person or entity obtaining the Software and Documentation from the Partner and made a party to this Agreement as provided above.

1.5 "Object Code" means any compiled, assembled or machine-executable version of the Software, or any part thereof.

1.6 "Partner" means a reseller or solutions developer authorized by Licensor to provide the Software and Documentation to end users and from which Licensee obtains the Software licensed hereunder.

1.7 "Software" means this computer program accompanying this Agreement, in Object Code form only, together with upgrades and updates that are made generally available by Licensor pursuant to an ARUS subscription, where an ARUS subscription is held by Licensee, and includes certain third-party software, which may only be used in conjunction with Licensor's Software, and which third parties shall be the direct and intended third-party beneficiaries of this Agreement.

1.8 "Source Code" means the human readable form of the Software.

2. License Grant. Subject to all the terms and conditions of this Agreement and any agreement relating to the Software or Documentation between Licensee and the Partner, Licensor hereby grants to Licensee and only Licensee a nonexclusive, non-sublicenseable, non-assignable right and license, under Licensor's intellectual property rights in the Software and Documentation, to use the Software and Documentation, only in accordance with any applicable Documentation, on the levels of servers and as to the number of client access licenses for which Licensee has purchased a license.

3. Ownership. As between the parties, Licensor (or its licensors) retains title to and ownership of and all proprietary rights with respect to the Software and Documentation and all copies and portions thereof. The license grant hereunder does not constitute a sale of the Software or Documentation or any portion or copy of them, and except as expressly provided herein, Licensee does not acquire any intellectual property or other proprietary rights in or related thereto.

4. Protection of Software.

4.1 Legends and Notices. Licensee shall not remove from the Software or Documentation or modify any product identification, copyright notices or other notices that appear on the Software or Documentation.

4.2 Copies. Licensee shall not copy, in whole or in part, the Software or Documentation for any purpose whatsoever without the express written consent of Licensor, except for one copy solely for backup purposes. Licensee must reproduce and include any product identification and notices referred to in Section 4.1 on any copies and any associated media.

4.3 Certain Restrictions. Licensee shall not (and shall not allow any third party to): (i) decompile, disassemble, translate, bootleg or otherwise reverse engineer or attempt to reconstruct or discover any Source Code or underlying ideas, algorithms, file formats or programming or interoperability interfaces of the Software, or of any files contained in or generated using the Software, by any means whatsoever; (ii) provide, lease, lend, use for timesharing, outsourcing or hosting or service bureau purposes or otherwise use or allow others to use the Software to or for the benefit of third parties, (iii) modify, incorporate into or with other software or create a derivative work of any part of the Software; or (v) create or disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

4.4 Competitive Products. Licensee shall not develop, market or sell any Competitive Product based on or derived in any way from the Software, Documentation or from the benefits of know-how resulting from access to or work with Licensor's Confidential Information. The term "benefits of know how" means information in non-tangible form which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know how or techniques contained therein.

4.5 Confidentiality. Licensee acknowledges that the Software constitutes valuable proprietary information and includes Licensor's trade secrets and copyrights, and Licensee will preserve the confidentiality of the Software in the same manner that Licensee protects its own confidential information and, in any event, with at least reasonable and prudent care.

5. Warranty.

5.1 Warranty. Licensor hereby warrants that, for a period of 90 days from the date of delivery thereof, the unmodified Software, when used in accordance with the associated Documentation, will materially conform to the technical specifications set forth in the Documentation applicable to such

Software. This limited warranty is void if Software failure has resulted from modification, accident, abuse, misuse or misapplication of the Software or other conduct or conditions outside the control of Licensor. Licensee's sole remedy for any breach of this limited warranty shall be, at Licensor's sole discretion, either (i) return of the price paid by Licensee for the defective Software or (ii) repair or replacement by Licensor of the defective Software. The warranty set forth in this Section 5.1 will terminate upon any termination of the license granted hereunder.

5.2 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, LICENSOR MAKES NO WARRANTIES RELATING TO THE SOFTWARE OR DOCUMENTATION, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ON BEHALF OF ITS LICENSORS OR ANY OTHER THIRD PARTY, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND ANY WARRANTIES RELATING TO NON-INTERRUPTION OF USE OR FREEDOM FROM VIRUSES OR BUGS. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF LICENSOR CONCERNING THE SOFTWARE OR DOCUMENTATION.

6. Maintenance. Maintenance and support (including ARUS) will be provided to Licensee only by the Partner and not by Licensor, and only to the extent set forth in an agreement between Licensee and the Partner. No ARUS subscription shall survive termination of the license granted hereunder.

7. Term, Termination and Survival. The license granted hereunder is effective until terminated. The license granted hereunder will terminate automatically if Licensee fails to cure any material breach of this Agreement or any agreement between Licensee and the Partner relating to the Software within 30 days of receiving notice of such breach from Licensor or the Partner (or immediately upon notice in the case of a breach of Section 4 (Protection of Software)). Upon termination, Licensee shall immediately cease all use of the Software and Documentation and return or destroy all copies of the Software and Documentation and all portions thereof and, at Licensor's request, so certify to Licensor. Except for the license granted hereunder and except as otherwise expressly provided herein, the terms of this Agreement shall survive any termination of the license granted hereunder. Termination is not an exclusive remedy and all other remedies will be available whether or not the license granted hereunder is terminated.

8. Limitation of Remedies and Damages. EXCEPT FOR BODILY INJURY OF A PERSON, LICENSOR SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (I) FOR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR (II) FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR (III) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. LICENSOR'S LICENSORS SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WHATSOEVER.

9. Government Matters.

9.1 Export. Licensee shall comply with all applicable import and export laws, restrictions, and regulations of any United States or foreign agency or authority. Licensee will not import or export or re-export, or allow the import or export or re-export of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations.

9.2 Government Procurement. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all software and accompanying documentation provided in connection with this Agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Licensee will ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

10. Miscellaneous.

10.1 Governing Law; Venuc for Disputes. This Agreement shall be governed in all respects by the laws of the state of Washington and the United States, without regard to the choice of law rules thereof. Application of the U.N. Convention on Contracts for the International Sale of Goods is expressly excluded. The sole jurisdiction and venue for actions relating to the subject matter hereof shall be the state and US federal courts located in King County, Washington. Both parties consent to the jurisdiction of such courts and agree that process may be served in the manner provided by applicable Washington state or United State federal law.

10.2 Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

10.3 Equitable Remedies. The parties agree that a material breach of this Agreement adversely affecting Licensor's proprietary rights in the Software or Documentation would cause irreparable injury to Licensor for which monetary damages would not be an adequate remedy and that Licensor shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

10.4 Waivers; Amendments. No delay, omission, or failure to exercise any right or remedy provided herein shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right or remedy may be exercised, from time to time as may be deemed expedient by the party exercising such remedy or right. Any waivers or amendments shall be effective only if made in writing by non-preprinted agreements and signed by a representative of the respective parties authorized to bind the parties.

10.5 Invalidity. In the event that any provision of this Agreement is unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.

10.6 Assignment. Neither this Agreement nor any rights granted herein may be assigned or transferred by Licensee, whether voluntarily or by operation of law, without the express written permission of Licensor, and any attempt to do so shall be null and void. This Agreement or any rights or obligations hereunder may be assigned by Licensor without the consent of Licensee.

10.7 Relationship of Parties. Nothing herein shall be deemed to create an employer-employee relationship between Licensor and Licensee, nor any agency, joint venture or partnership relationship between the parties. Neither party shall have the right to bind the other to any obligation, nor have the right to incur any liability on behalf of the other.

10.8 Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with regard to the subject matter hereof and supersedes any and all prior discussions, negotiations and memoranda related hereto.

ATTACHMENT 2 TO EXHIBIT A



ANNUAL RELEASE AND UPDATE SUBSCRIPTION (ARUS) & Support POLICY

TRACRoIP-ARUS is a comprehensive subscription that provides the rights to upgrade purchased components to future releases of the licensed software, and provides third tier technical support to Partners on behalf of TRACRoIP-ARUS paying Customers (see TracStar Maintenance and Support for further details).

ARUS includes:

- Upgrades
- Tier 2 Help Desk 8/5 Technical Support
- Tier 3 Technical phone Support
- 24/7 Emergency ONLY phone support

ARUS is renewable at 12-month intervals from the time ARUS begins. At a minimum, customers need to purchase one year of TRACRoIP-ARUS along with the initial software purchase. BHPD has chosen to purchase 3 years.

Definitions

Upgrades: Upgrades are indicated by a formal release of new software designated as Generally Available (GA) and can include a change in the major and/or minor version number of the software.

Technical Support

Support

- Cobham will provide 12 months of 8x5 help desk support. In addition we will provide emergency support 24/7 for 12 months as outlined below.

8/5 Phone Support

- Cobham provides 8/5 Help Desk that is available by both Toll and Toll Free numbers. Support technicians can assist with any aspect of customer's solution. All support cases will be entered into the ticketing system for tracking of requests made by phone. Our support technicians are trained to very high level and typically answer questions ranging from antenna hardware to client support. We consider our first line technicians as Tier-II level trained, and these technicians are backed up by Tier-III level support in the rare case that it is needed.

Help Desk: US: 888-650-9054 | US: 407-650-9054

Ticket System

- Cobham provides a web-based ticketing system for the request, tracking and confirmation of any service issue. Access to this system is available 24/7, and requests can be made from the web portal or by sending an email to the system. Additional online troubleshooting documentation is available through the ticket system for self-help or reference for a specific error. Technical support may include the issuance of software patches to resolve customer specific issues when necessary.

EXHIBIT B

SCHEDULE AND RATES OF PAYMENT

City agrees to compensate Consultant for the Services described in Exhibit A, a sum not to exceed Fifty-One Thousand Dollars (\$51,000.00), including \$49,802.00 for the Wave Mobile Communicator system, implementation services, and extended warranty, and not to exceed \$1,198.00 for unanticipated contingency services outside the Scope of Exhibit A.

All pricing is inclusive of applicable sales tax, freight and delivery charges, and any other fees and expenses as detailed in Attachment 1 to Exhibit B, Consultant's Quotation. Contingency funds authorized by the City Manager or his designee in writing for additional hardware, software, equipment or services shall be payable in full upon satisfactory completion of services.

Consultant shall submit an itemized statement to City for its services performed as milestones for the project are completed. Invoices shall include documentation setting forth, in detail, a description of the services rendered and the equipment provided. City shall pay Consultant all undisputed amounts of such billing within thirty (30) days of receipt of the same.

ATTACHMENT 1 TO EXHIBIT B CONSULTANT'S QUOTATION DATED 10/30/13

Prepared by:
Nick Upchurch
(407) 650-9054
nick.upchurch@cobham.com
Cobham SATCOM
Satcom Land - TracStar Products

The most important thing we build is trust.

Commercial in Confidence

QUOTATION

COBHAM

Date: 30-Oct-13
Quotation Number: NU 100913 - 7 Rev3
Page 1 of 1

REF:

Please Reference Quote Number NU 100913 - 7 Rev3
On Your Purchase Order
Thank You

Customer: Beverly Hills Police Department
Attn: Special Projects Officer
464 N Rexford Dr
Beverly Hills, CA 90210

Technical Contact: Ron Derdenan
Email Address: rderdenan@beverlyhills.org
Phone: 310.285.2132
Cell Phone: 310.505.1019
FAX:

Quotation Valid for Sixty Days
 Send Purchase Order With
 Quotation Number to:
TracStar Systems
 1551 College Park Business Center Rd
 Orlando, FL 32804, USA
 +1 (407) 650 9054
 +1 (407) 650 9086



cc: satcomlandorders@cobham.com
cc:
cc:

ECCN: SA991g Cage Code 43M29

TRACSTAR CONFIDENTIAL

The information contained in this quotation is the property of TracStar Systems. Except as specifically authorized in writing by TracStar, the holder of this quotation shall keep the information contained herein confidential and shall protect same in whole or in part from disclosure and dissemination to third parties. The recipient of this quote shall use the information contained herein for evaluation purposes only. The information in this quotation is subject to change without notice. TracStar assumes no responsibility for errors that might appear in this quotation.

Line Item	Qty	Part Number	Description	Unit Price	Extended Price	Delivery / Notes	Internal Reference Only
1	1	TracRoIP-W-Basic	Wave RoIP System Basic - Includes 3 Communication Channels (Basic)	\$12,885	\$12,885	Base RoIP Package Software Only/Hardware Not Included	W-B
2	1	TracRoIP-W-DS	WAVE Dispatch Communicator	\$3,495	\$3,495	Dispatch Communicator Application License Fee (concurrent)	W-DS
3	5	TracRoIP-W-DC	Wave Desktop Communicator	\$465	\$2,325	Desktop Communicator Application License Fee (concurrent)	W-DC
4	40	TracRoIP-W-MCZP	WAVE Mobile Communicator (Any Platform) Includes P2P Feature License	\$325	\$13,000	Mobile Communication Application License Fee (concurrent)	W-MCZP
5	5	TracRoIP-W-WC	WAVE Web Communicator	\$345	\$1,725	Web Communicator Application License Fee (concurrent)	W-WC
6	1	TracRoIP-ARUS	Annual Release and Upgrade Subscription for 3 years. Includes software maintenance and upgrades during the first 3 years.	\$13,372	\$13,372	ARUS based on configuration above. Changes in configuration will change ARUS amount.	ARUS
7	1	TracRoIP-Services	Design, Installation and Configuration for RoIP Systems. Includes system design, hardware installation, configuration and initial testing.	\$3,000	\$3,000	Includes T&M for onsite engineering, install, configuration and one time user and admin training.	Initial Services
8							
9							
10							
11							
12							
13							
14							
				TOTAL	\$49,802		

<p>TERMS - NET 30 With Approved Credit</p> <p>All Quotations in US Dollars</p> <p>This quotation is made subject that the goods shall not be resold or exported to countries specified in the Country Guidance Chart available at http://www.cobham.com/about-cobham/sales-and-security/about-us/usa-information.aspx without prior written approval from TracStar Systems, Inc.</p> <p>This quotation is made subject to TracStar's Standard Terms and Conditions for the sale of Goods and Supply of Services (as attached / available at http://www.cobham.com/about-cobham/sales-and-security/about-us/usa-information.aspx) (available on request). This proposal is the entire understanding between the parties in relation to its subject matter and supersedes any previous written or oral agreements, negotiations or understandings between the parties.</p>	<p>FOB - Point of Origin</p> <p>DELIVERY</p> <p>The delivery lead-time specified above is estimated, but the exact lead time will be confirmed at time of order acknowledgement provided by TracStar. If the Goods are to be exported, the quoted delivery dates are subject to receipt of all export documents and authorizations.</p> <p style="text-align: right;">TracStar Systems, Inc. dba Cobham Satcom</p>
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Form: QM-67-13

These commodities, technology, and/or software must be exported from the United States in accordance with U.S. Export Administration Regulations. Diversion contrary to U.S. Law is prohibited. Access to these articles by Foreign Nationals (15 CFR 574.2(b)(1)) must be precluded without the prior written approval of the U.S. Department of Commerce.

Signature Nick Upchurch

Commercial in Confidence
Not For Release Distribution
Prices Subject to Change Without Notice
Good up to 90 Days From
10/30/2013

30000-12

EXHIBIT C TRACSTAR SYSTEMS, INC. TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SUPPLY OF SERVICES

TRACSTAR SYSTEMS, INC. TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SUPPLY OF SERVICES

This Agreement is made between

TracStar Systems, Inc. d/b/a Cobham Antenna Systems (a company incorporated whose principal place of business is in the State of Florida), whose address is 1551 College Park Business Center Rd, Orlando, FL 32804 and fax nr is +1 (407) 650-9089 ("Supplier") issuing the quotation and/or subsequent written acknowledgement of order in which these terms are referenced;

and

the company issuing the purchase order for the Goods (hereinafter the "Buyer").

This Agreement shall become effective upon the date of the Supplier's quotation or written acknowledgement of order as applicable.

Supplier and Buyer shall be known individually as "Party" and collectively as the "Parties".

PART A - GENERAL

1. Formation

- 1.1 Subject to any variation permitted under the Contract, the Contract will be upon these Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 1.2 Each order or acceptance of a quotation for Works will be deemed to be an offer by Buyer to purchase Works upon these Terms and Conditions. The Contract is formed when the order is accepted by Supplier, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by Supplier.
- 1.3 Any quotation is valid for a period of thirty days only from its date (or such other period if specified in such quotation), provided Supplier has not previously withdrawn it, but no Contract shall be created by acceptance of such quotation. A Contract will be created on acknowledgement of order by Supplier as set out in clause 1.2.
- 1.4 Buyer must ensure that the terms of its order are complete and accurate.
- 1.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of Buyer's acceptance of these Terms and Conditions, even in cases where there has been no acknowledgement of order by Supplier in terms of clause 1.2.
- 1.6 Save as set out in the Contract, these Terms and Conditions may not be varied or amended except in writing and signed by a duly authorized officer of each Party.

2. Miscellaneous

- 2.1 Performance by Supplier of its obligations is dependent upon prompt performance by Buyer of its obligations under the Contract.
- 2.2 Each right or remedy of Supplier under any Contract is without prejudice to any other right or remedy of Supplier under this or any other Contract.
- 2.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective without, as far as is possible, modifying any other provision of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect. The Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the illegal, invalid or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in the Contract.
- 2.4 No failure or delay by Supplier to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 2.5 Supplier may assign, delegate, license, hold on trust or subcontract all or any part of its rights or obligations under the Contract.
- 2.6 The Contract is personal to Buyer who may not assign, delegate, license, hold on trust or subcontract all or any of its rights or obligations under the Contract without Supplier's prior written consent.
- 2.7 Save as set out in clause 10.5, the Parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it.
- 2.8 The Contract and the Specification contain all the terms which Supplier and Buyer have agreed in relation to the Works and supersede any prior written or oral agreements, representations or understandings between the Parties relating to such Works. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Supplier which is not set out in the Contract or Specification. Nothing in this clause will exclude any liability which one Party would otherwise have to the other Party in respect of any statements, promises or representations made fraudulently.

3. Notices

- 3.1 Any notice or demand in connection with the Contract will be in writing and may be delivered by hand, registered mail or facsimile provided a

transmission receipt is retained or legally binding registered e-mail, addressed to the recipient at its registered office and will be marked for the attention of the General Manager/Company Secretary (or such other address or person which the recipient has notified in writing to the sender in accordance with this clause, to be received by the sender not less than seven Business Days before the notice is dispatched).

- 3.2 The notice, demand or communication will be deemed to have been duly served:
 - 3.2.1 if delivered by hand, at the time of delivery; or
 - 3.2.2 if delivered by registered mail or e-mail, 48 hours after being posted or in the case of registered Airmail 10 days after being posted (excluding days other than Business Days) or in the case of facsimile the time receivedprovided that, where in the case of delivery by hand or by facsimile such delivery occurs either after 4:00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9:00 am on the next following Business Day (such times being local time at the address of the recipient).

4. Payment

- 4.1 Subject to clause 4.9, Supplier may invoice Buyer for the Goods at such time as set out in the acknowledgement of order or at any time after delivery and for the Services on or at any time after performance commences and payment is due in the currency stated in the written acknowledgement of order (or where no acknowledgement of order is issued as stated in the quotation of Works) thirty days after date of such invoice.
- 4.2 No payment will be deemed to have been received until Supplier has received cleared funds.
- 4.3 All sums payable to Supplier under the Contract will become due immediately upon termination of the Contract.
- 4.4 All payments to be made by Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless Buyer is required by law to make any such deduction or withholding.
- 4.5 Supplier may appropriate any payment made by Buyer to Supplier to such of the invoices for the Works as Supplier thinks fit, despite any purported appropriation by Buyer.
- 4.6 If any sum payable under the Contract, or any other agreement between Buyer and Supplier, is not paid when due then, without prejudice to Supplier's other rights under the Contract, Supplier will be entitled to suspend deliveries of the Goods or performance of the Services until the outstanding amount has been received by Supplier from Buyer.
- 4.7 If any sum payable under the Contract is not paid when due then, without prejudice to Supplier's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at three per cent per annum over Barclays Bank plc base rate from time to time.
- 4.8 Notwithstanding anything contained in the Contract to the contrary, in the event that there are withholding taxes imposed by the tax authorities in respect of payments due pursuant to the Contract, Buyer shall be entitled to deduct and pay such withholding taxes to the said tax authorities on behalf of Supplier unless Supplier has previously provided Buyer with evidence satisfactory to the said tax authorities in the form of certification from its auditors/tax authorities that Supplier is not subject to tax on the relevant income. If any withholding taxes are deducted and paid to such tax authorities then Buyer will provide to Supplier within thirty days from the date of Buyer's payment to the Supplier the tax credit documentation necessary for Supplier to receive a tax credit equal to the withholding tax. Where Supplier has made reasonable efforts to reclaim the withholding tax but is unable to do so (in whole or in part), Buyer shall pay such an amount to Supplier such that the net amount, after deduction of the withholding taxes that Supplier has been unable to reclaim, is equal to the amount that Supplier would have received from Buyer had such withholding requirement not been applicable.

- 4.9 Where stated in the Supplier's quotation, payment shall be made by the Buyer as follows:
- 4.9.1 a prepayment of 100% (one hundred percent) of the total Contract price shall be payable on receipt of the Supplier's pro-forma invoice. Payment of such sum shall be made by the Buyer to Supplier by either bank transfer or by banker's draft, in each case the Buyer is to ensure that the sum is received in cleared funds in the Seller's account within 30 days of the date of the pro-forma invoice; or
- 4.9.2 Payment of the Contract price or any installment thereof shall be made by an Irrevocable Letter of Credit, in all respects acceptable to the Supplier; and confirmed by a major U.S. or UK clearing bank in favor of the Supplier.

5. Personnel

Without in any way restricting the right of an employee freely to change employment, if an employee of either Party is induced either directly or indirectly to enter the service of or commence an engagement (in any capacity whatsoever) with the other Party at any time during the period until completion of the Supplier's warranty obligation pursuant to **clause 22.1** or within 5 months thereafter, then that other Party will pay an amount equal to the annual cost of employing such employee (for the avoidance of doubt to include only the annual cost of such employee's net salary and net benefits based on the employee's salary at the date of termination of the employee's employment by either Party). Such payment is made in recognition only of the disruption that such inducements would cause to the efficient conduct of the former employer's business.

6. Confidentiality

- 6.1 Each Party will keep confidential any and all Confidential Information that it may acquire from the other Party.
- 6.2 Neither Party will use the Confidential Information of the other Party for any purpose other than to perform its obligations under the Contract. Each Party will ensure that its officers and employees comply with the provisions of this **clause 6 (Confidentiality)**.
- 6.3 The obligations on the recipient of the Confidential Information set out in **clauses 6.1** and **6.2** will not apply to any information which:
- 6.3.1 is publicly available or becomes publicly available through no act or omission of the recipient; or
- 6.3.2 the recipient is required to disclose by order of a court of competent jurisdiction, but only to the extent stated in such order.
- 6.4 Each Party agrees to allow the other Party and its affiliates to store and use the other Party's business contact information, including names, business phone numbers, and business e-mail addresses (together referred to as "Contact Information"), in connection with this Contract anywhere they do business. Such information will be processed and used only in connection with this Contract and the marketing of Supplier's services, and may be provided to subcontractors who promote, market and support certain Supplier goods and services, and to any assignees of either Party for uses consistent with the Contract.
- 6.5 Upon termination or expiration of the Contract, each Party agrees at the request of the other Party to destroy and certify destruction of all Confidential Information in its possession received from the other.

7. Intellectual Property

- 7.1 Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under the Contract in any Goods or arising out of the performance of any Services shall vest in and be the exclusive property of Supplier.
- 7.2 No right or license is granted to Buyer in respect of the existing or future Intellectual Property Rights of Supplier, except the right to use the Goods, or resell the Goods (excluding the Software which may only be sublicensed), or use the Services in each case in Buyer's ordinary course of business and, in the case of the Software, solely for the purpose of the use of the Works.
- 7.3 Buyer will not without Supplier's prior consent allow any trademarks of Supplier or other words or marks applied to the Works to be obliterated, obscured or omitted nor add any additional marks or words.
- 7.4 Buyer shall not cause or permit the reverse engineering, disassembly, or decompilation of the Goods or otherwise cause or permit any attempt to derive, obtain or modify the source code of the Software, except to the extent permitted by law.
- 7.5 If the Software is subject to a separate license agreement between Buyer and Supplier, then the terms of such separate license agreement shall supersede the terms of any Contract insofar as they explicitly relate to the licensing of such Software.

8. Force Majeure

- 8.1 Supplier will be deemed not to be in breach of the Contract or otherwise liable to Buyer for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in this **clause 8 (Force Majeure)**.
- 8.2 If Supplier's performance of its obligations under the Contract is affected by Force Majeure:
- 8.2.1 it will give written notice to Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavors to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, minimize its severity, without being obliged to incur any expenditure;
- 8.2.2 subject to the provisions of **clause 8.3**, the date for performance of such obligation will be suspended only for a period equal to the delay caused by such event; and
- 8.2.3 it will not be entitled to payment from Buyer in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 8.3 If the Force Majeure in question continues for more than one hundred and eighty days, either Party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than thirty days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

9. Termination

- 9.1 Either Party may by notice in writing served on the other Party terminate the Contract immediately if that other Party:
- 9.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Party in breach fails to remedy such breach within thirty days of service of a written notice from the Party not in breach, specifying the breach and requiring it to be remedied. Failure to pay any sums due in accordance with the Contract is a material breach of the terms of the Contract;
- 9.1.2 is unable to pay its debts as they fall due; admits its insolvency; commences a case or has a case commenced against it under any applicable bankruptcy, insolvency, or reorganization laws now or hereinafter in effect (except in the case of the filing of an involuntary petition for bankruptcy, in which case such right to terminate shall not arise unless an order for relief is entered or such petition is not dismissed within ninety (90) days of filing); commences any other dissolution, liquidation, or similar proceeding under the laws of any jurisdiction now or hereafter in effect; makes an assignment for the benefit of its creditors; suffers the appointment of any receiver, custodian, or like officer for itself or any substantial portion of its property that is not discharged or stayed within sixty (60) days;
- 9.1.3 has any distraint, execution or other process levied or enforced on any of its property; or
- 9.1.4 ceases to trade or appears in the reasonable opinion of the other Party likely to cease to trade.
- 9.2 Supplier may by notice in writing served on Buyer terminate the Contract immediately if:
- 9.2.1 Buyer has a change in its senior management and/or control, such that the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Buyer, whether through the ownership of voting shares, by contract, or otherwise, is changed, including by: (i) the reorganization, consolidation, or merger of the Buyer with or into any other entity; or (ii) the sale, transfer, or other disposition of all or substantially all of the assets or stock of the Buyer;
- 9.2.2 the equivalent of any of **clauses 9.1.1** to **9.1.4** or **9.2.1** occurs to Buyer under the jurisdiction to which Buyer is subject; or
- 9.2.3 Buyer commences the manufacture of any goods which are similar to or may compete with the Goods.
- 9.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Buyer or Supplier accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 9.4 Supplier will be entitled to suspend any deliveries or performance otherwise due to occur following service of a notice specifying a breach under **clause 9.1.1**, or if the Buyer is in breach or default under any other agreement between the Parties, until such breach or default is remedied or the Contract terminates, whichever occurs first.

10. Exclusion and Limitation of Liability

- 10.1 SUPPLIER DOES NOT EXCLUDE OR LIMIT ITS LIABILITY (IF ANY) TO BUYER FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR SUPPLIER TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.
- 10.2 OTHER THAN ANY LIABILITY OF SUPPLIER ARISING UNDER **CLAUSE 10.1**, WHICH SHALL NOT BE LIMITED, AND WITHOUT PREJUDICE TO THE OTHER PROVISIONS OF THIS **CLAUSE 10 (EXCLUSION AND LIMITATION OF LIABILITY)**, SUPPLIER'S AGGREGATE LIABILITY AS DEFINED IN PART D (DEFINITIONS AND INTERPRETATION) UNDER EACH CONTRACT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF 115% OF THE AMOUNT PAID BY BUYER TO SUPPLIER UNDER THAT CONTRACT OR \$10,000.00.
- 10.3 EXCEPT AS PROVIDED IN **CLAUSE 10.1**, SUPPLIER WILL BE UNDER NO LIABILITY AS DEFINED IN PART D (DEFINITIONS AND INTERPRETATION) TO BUYER WHATSOEVER IN RESPECT OF
- 10.3.1 ANY CLAIM ARISING OUT OF AN EVENT WHICH IS CAUSED, OR CONTRIBUTED TO, BY THE GOODS AND SUCH EVENT OCCURS AFTER THE COMMENCEMENT OF THE LAUNCH PROCEDURE OF THE VEHICLE CARRYING SUCH GOODS INTO SPACE;
- 10.3.2 PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR
- 10.3.3 LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL) OR
- 10.3.4 ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS,
- IN EACH CASE HOWSOEVER CAUSED ARISING OUT OF OR IN CONNECTION WITH:
- 10.3.5 ANY OF THE WORKS, OR THE MANUFACTURE OR SALE OR SUPPLY, OR FAILURE OR DELAY IN SUPPLY, OF THE WORKS BY SUPPLIER OR ON THE PART OF SUPPLIER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS;
- 10.3.6 ANY BREACH BY SUPPLIER OF ANY OF THE EXPRESS OR IMPLIED TERMS OF THE CONTRACT;
- 10.3.7 ANY USE MADE OR RESALE BY BUYER OF ANY OF THE WORKS, OR OF ANY PRODUCT INCORPORATING ANY OF THE WORKS; OR
- 10.3.8 ANY STATEMENT MADE OR NOT MADE, OR ADVICE GIVEN OR NOT GIVEN, BY OR ON BEHALF OF SUPPLIER.
- 10.4 EXCEPT AS EXPRESSLY SET OUT IN THE CONTRACT, SUPPLIER HEREBY EXCLUDES TO THE FULLEST EXTENT PERMISSIBLE IN LAW, ALL CONDITIONS, WARRANTIES AND STIPULATIONS, EXPRESS (OTHER THAN THOSE SET OUT IN THE CONTRACT) OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH, BUT FOR SUCH EXCLUSION, WOULD OR MIGHT SUBSIST IN FAVOR OF BUYER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 10.5 EACH OF SUPPLIER'S EMPLOYEES, AGENTS AND SUBCONTRACTORS MAY RELY UPON AND ENFORCE THE EXCLUSIONS AND RESTRICTIONS OF LIABILITY IN THE CONTRACT IN THAT PERSON'S OWN NAME AND FOR THAT PERSON'S OWN BENEFIT, AS IF THE WORDS "ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS" FOLLOWED THE WORD SUPPLIER WHEREVER IT APPEARS IN THOSE CLAUSES SAVE FOR EACH REFERENCE IN **CLAUSE 10.3.5**.
- 10.6 BUYER ACKNOWLEDGES THAT THE ABOVE PROVISIONS OF THIS **CLAUSE 10 (EXCLUSION AND LIMITATION OF LIABILITY)** ARE REASONABLE AND REFLECTED IN THE PRICE WHICH WOULD BE HIGHER WITHOUT THOSE PROVISIONS, AND BUYER WILL ACCEPT SUCH RISK AND/OR INSURE ACCORDINGLY.
- 10.7 BUYER IS SOLELY RESPONSIBLE AND LIABLE FOR THE PROPER LEGAL DISPOSAL OF ALL MATERIALS PURCHASED FROM SUPPLIER AT THE END-OF-LIFE CYCLE OF SUCH MATERIALS.

11. Law

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract or of any non-contractual obligations arising out of or in connection with it will be governed by the laws of the State of New York applicable therein (without giving effect to its principles of conflicts of laws).

12. Disputes

- 12.1 **Resolving Disputes**
- The intent of the Parties is to identify and resolve any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purpose of this clause, a Dispute) promptly. Each Party agrees to perform as follows:

- 12.1.1 to notify the other Party of any Dispute in reasonable detail as soon as possible after any Dispute arises;
- 12.1.2 to negotiate in good faith to seek to resolve the Dispute; and
- 12.1.3 if a Dispute is not resolved within thirty days of it arising, either Party shall be entitled to refer to and finally resolve such Dispute by arbitration under the AAA Arbitration Rules (for the purpose of this clause, the Rules). The Rules are incorporated by reference into this clause and capitalized terms used in this clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules. The number of arbitrators shall be three (the Tribunal). The Parties shall each nominate one arbitrator for appointment by the AAA Court. The two arbitrators nominated by the Parties shall jointly nominate the Chairman for appointment by the AAA Court. Any requirement in the Rules to take account of the nationality of a person considered for appointment as an arbitrator shall be dis-applied and a person may be nominated or appointed as an arbitrator (including as Chairman) regardless of his nationality. The seat, or legal place of arbitration, shall be New York, New York. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by a certified English translation. Witnesses who are unable to speak English shall be permitted to give evidence through a translator. Unless the parties agree to extend this period, the Tribunal will render its award in writing as soon as is reasonably practicable of the close of the hearing. In no event shall the Tribunal have the right or power to award punitive or exemplary damages. The jurisdiction of the State of New York courts is excluded.
- 12.2 If, following the time specified for service of the Statement of Case, the Statement of Defense, the Statement of Reply/Defense to Counterclaim and/or the Statement of Reply to Defense to Counterclaim, as applicable (the Statements), it appears to the Tribunal that there is or may be no real prospect of succeeding on any or all of the claims made in the Statements or of successfully defending any or all of the claims made in the Statements, the Tribunal may determine such claim(s) by a summary procedure if it considers that it is in the interests of justice to do so. In the event that a summary procedure is adopted, the Tribunal shall proceed to determine such claim(s) as soon as reasonably practicable. The Tribunal may call for further short written submissions in relation to such claim(s) and shall only hold an oral hearing to determine such claim(s) if it feels that it is necessary to do so. The Tribunal may decide to determine only certain claims advanced in the arbitration by the summary procedure.
- 12.3 Service of any Request for Arbitration made pursuant to this clause shall be by written notice in accordance with **Notice clause 3**. This **clause 12.3** does not affect any other method of service allowed by law.
- 12.4 This **clause 12** will not prevent a Party (the "affected Party") from:
- 12.4.1 seeking injunctive relief in the case of any breach or threatened breach by the other Party of any obligation of confidentiality or any infringement by the other Party of the affected Party's Intellectual Property Rights;
- 12.4.2 commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
- 12.4.3 commencing proceedings in the case of non-payment of an undisputed invoice.

13. Installments

- 13.1 Supplier may deliver the Works by separate installments or perform any Services in stages. Each separate installment or stage will be invoiced and paid for in accordance with the provisions of the Contract. Each installment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to an installment or stage will entitle Buyer to repudiate or cancel any other Contract, installment or stage.

14. Export/Import

- 14.1 The Works (including, without limitation, any Software) may be subject to the export or import laws and regulations of:
- 14.1.1 the United States, including without limitation the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the U.S. Export Administration Regulations (15 C.F.R. Parts 730-774), and the economic and trade sanctions administered by the U.S. Department of Treasury Office of Foreign Assets Control;
- 14.1.2 the European Union and its member states, including without limitation Council Regulation (EC) No. 1334/2000; and
- 14.1.3 other countries (collectively, "Export/Import Law"). Buyer agrees to comply strictly with all Export/Import Laws applicable to the Works. Buyer shall

promptly notify Supplier of any authorization requirements under Export/Import Laws that may apply to delivery of the works to Buyer site(s). Buyer acknowledges and agrees that the works shall not be exported, re-exported, trans-shipped or otherwise transferred to Cuba, Iran, North Korea, Syria, Sudan, or any other countries for which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or a national or resident thereof, or to any person or entity on the U.S. Department of Treasury List of Specially Designated Nationals, the U.S. Department of Commerce Denied Parties or Entity List, or to any person on any comparable list maintained by the European Union or its member states (collectively, "Denied or Restricted Parties"). The lists of Embargoed Countries and Denied or Restricted Parties are subject to change without notice. Buyer represents and warrants that neither it nor any of their customers or their users is located in, a national or resident of, or under the control of an Embargoed Country or similarly Denied or Restricted Party. Buyer specifically shall obtain all required authorizations from the U.S. (or EU as applicable) Government before transferring or otherwise disclosing technical data or technology (as those terms are defined in 22 C.F.R. § 120.10 and 15 C.F.R. § 722, respectively), to any Foreign Person (as defined in 22 C.F.R. § 120.16).

- 14.2 Registration
In accordance with 22 C.F.R. Part 122, any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the U.S. State Department's Directorate of Defense Trade Controls. Engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing defense services. Manufacturers who do not engage in exporting must nevertheless register.
- 14.3 Acceptance of these terms and conditions certifies to the Supplier that the Buyer is in compliance with 22 C.F.R. Part 120 as required and the Buyer's registration will remain valid during the terms of this agreement.
- 14.4 Further to acceptance, the Buyer further certifies it:
14.4.1 Understands its obligation to protect EAR or ITAR controlled Goods and Services as data as necessary from unauthorized disclosure or access to foreign person employees or visitors.
14.4.2 In the performance of the contract, the Buyer understands its obligation to determine whether it will require the use of third party subcontractors to access any technical data, Goods and Services. If required, the Buyer is responsible for identifying and licensing any activity that requires export authorization from the Department of Commerce, Bureau of Industry and Security or the Department of State, Directorate of Defense Trade Controls.
- 14.5 The Goods shall not be sold or exported to countries specified in the Country Guidance Chart which can be found at <http://www.cobham.com/about-cobham/aerospace-and-security/about-us/useful-information.aspx> without prior written approval of Supplier

15. Corrupt Practices

- 15.1 Buyer represents and warrants that it understands the provisions of any relevant laws relating to the prevention of corruption and agrees to comply with them to the extent that they apply.

16. Indemnity

- 16.1 BUYER AGREES TO INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS SUPPLIER FROM AND AGAINST:
16.1.1 ALL COSTS (INCLUDING THE COSTS OF ENFORCEMENT), EXPENSES, LIABILITIES (INCLUDING ANY TAX LIABILITY), CLAIMS ARISING FOR DEATH OR PERSONAL INJURY, DIRECT, INDIRECT OR CONSEQUENTIAL LOSS (ALL THREE OF WHICH TERMS INCLUDE, WITHOUT LIMITATION, PURE ECONOMIC LOSS, LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND LIKE LOSS), DAMAGES, CLAIMS, DEMANDS, PROCEEDINGS OR LEGAL COSTS (ON A FULL INDEMNITY BASIS) AND JUDGMENTS WHICH SUPPLIER INCURS OR SUFFERS AS A CONSEQUENCE OF A DIRECT OR INDIRECT BREACH OF THE CONTRACT OR NEGLIGENT PERFORMANCE OR DELAY OR FAILURE IN PERFORMANCE OR WILLFUL MISCONDUCT BY BUYER OR ITS EMPLOYEES, AGENTS OR CONTRACTORS. THE FOREGOING INDEMNITY SHALL NOT INCLUDE ANY LOSSES DUE SOLELY TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUPPLIER; AND
16.1.2 ANY CLAIMS:-
16.1.2.1 BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH

- 16.1.2.1.1 ANY ACT OR OMISSION OF SUPPLIER CARRIED OUT PURSUANT TO INSTRUCTIONS OF BUYER; OR
16.1.2.1.2 ANY BREACH BY BUYER OF ANY TERMS OF THE CONTRACT;
16.1.2.2 BY BUYER'S CUSTOMERS OR USERS OF THE WORKS; AND
16.1.2.3 ARISING FROM USE OF THE WORKS OTHER THAN AS SPECIFIED IN THE SPECIFICATION.

PART B - GOODS

17. Quantity and Description of the Goods

- 17.1 The quantity and description of the Goods will be as set out in Supplier's acknowledgement of order.
17.2 All samples, drawings, data sheets descriptive matter, specifications (other than the Specification) and advertising issued by Supplier (or the manufacturer of the Goods) and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
17.3 Supplier may make any changes to the Specification, design, materials or finishes of the Goods which:
17.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or
17.3.2 do not materially affect their quality or performance.

18. Price of the Goods

- 18.1 The price for the Goods will be the price specified in the acknowledgement of order and, unless otherwise expressly specified in such written acknowledgement of order, is exclusive of any
18.1.1 costs of packaging and carriage of the Goods; and
18.1.2 value added tax or other applicable sales tax or duty which will be added to the sum in question
18.2 cost of any pallets and returnable packaging or containers, which will be paid for by Buyer in addition to the price for the Goods when it is due to pay for the Goods.
18.3 Supplier will be entitled to increase the price of the Goods following any changes in the Specification made at the request of Buyer and agreed by Supplier or to cover any extra expense as a result of Buyer's instructions or lack of instructions, or to comply with the requirements referred to in clause 17.3.1.

19. Delivery of the Goods

- 19.1 Unless otherwise expressly specified in the written acknowledgement of order, delivery of the Goods will be made ex-works as defined in INCOTERMS 2010
19.2 Delivery of the Goods will be made during Supplier's usual business hours.
19.3 Supplier will use reasonable endeavors to deliver and perform each of Buyer's orders for the Goods within the time agreed when Buyer places an order and Supplier provides the acknowledgement of order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavors, Supplier is unable for any reason to fulfill any delivery on the specified date, Supplier will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Supplier have any Liability to Buyer for any delay or failure in delivery except as set out in this condition. Any delay in delivery will not entitle Buyer to cancel the Contract unless and until Buyer has given one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to Supplier requiring the delivery to be made and Supplier has not fulfilled the delivery within that period. If Buyer cancels the Contract in accordance with this clause then:
19.3.1 Supplier will refund to Buyer any sums which Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and
19.3.2 Buyer will be under no liability to make any further payments under clause 4.1 in respect of that Contract or part of the Contract which has been cancelled unless the Goods was delivered or is ready for delivery.
19.4 Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labor for loading the Goods.
19.5 If Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licenses or authorizations required to enable the Goods to be delivered on time (except solely on account of Supplier's default), the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) Supplier may:

- 19.5.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with this clause and charge Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- 19.5.2 following written notice to Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge Buyer for any shortfall below the price under the Contract or account to Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.
- 19.6 Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfill its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.
- 20. Risk/Ownership**
- 20.1 Risk of damage to or loss of the Goods will pass to Buyer on delivery (or deemed delivery in accordance with **clause 19.5**).
- 20.2 Ownership of the Goods (excluding Software) will not pass to Buyer until Supplier has received in full (in cash or cleared funds) all sums due to it in respect of:
- 20.2.1 the Goods; and
- 20.2.2 all other sums which are or which become due to Supplier from Buyer on any account.
- 20.3 Until ownership of the Goods (excluding Software) has passed to Buyer, Buyer must:
- 20.3.1 hold the Goods on a fiduciary basis as Supplier's bailee;
- 20.3.2 store the Goods (at no cost to Supplier) separately from all other Goods of Buyer or any third party in such a way that they remain readily identifiable as Supplier's property;
- 20.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 20.3.4 maintain the Goods in satisfactory condition insured on Supplier's behalf for their full price against all risks to the reasonable satisfaction of Supplier, and will whenever requested by Supplier produce a copy of the policy of insurance.
- 20.4 Buyer may resell the Goods (or, in the case of the Software, sublicense the Software) before ownership has passed to it solely on the following conditions:
- 20.4.1 any sale will be effected in the ordinary course of Buyer's business at full market value and Buyer will account to Supplier accordingly; and
- 20.4.2 any such sale will be a sale of Supplier's property on Buyer's own behalf and Buyer will deal as principal when making such a sale.
- 20.5 Buyer's right to hold the Goods will terminate immediately if any of the circumstances set out in **clauses 9.1 or 9.2** occur.
- 20.6 Supplier will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from Supplier.
- 20.7 Buyer grants Supplier, its agents and employees an irrevocable license and provision at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 20.8 Where Supplier is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer will be deemed to have sold all goods of the kind sold by Supplier to Buyer in the order in which they were invoiced to Buyer.
- 20.9 On termination of the Contract, howsoever caused, Supplier's (but not Buyer's) rights contained in this **clause 20 (Risk/Ownership)** will remain in effect.
- 21. Resale**
- 21.1 Buyer represents and warrants that it shall not, without the express prior written approval of the Supplier, resell the Goods in exactly the same condition in which they were supplied by the Supplier at the Delivery Point. The Supplier may make approval subject to such conditions as Supplier shall, in its discretion, deem appropriate, including but not limited to informing the Supplier of each occasion on which the Buyer resells the goods. For the purposes of this clause resale shall not include where Buyer integrates such Goods or explicitly provides such Goods as part of a larger Buyer solution or system for onward sale.
- 22. Warranty of the Goods**
- 22.1 SUPPLIER WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS, OR NINETY DAYS FOR CONTRACTS AGREED FOR THE REPAIR OF CLEINT OWNED GOODS ORIGINALLY SUPPLIED BY THE SUPPLIER, EACH PERIOD COMMENCING FROM THE DATE OF DISPATCH OF GOODS, WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF SUPPLIER TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN MATERIAL, WORKMANSHIP OR DESIGN (OTHER THAN A DESIGN MADE, FURNISHED OR SPECIFIED BY BUYER), REPAIR, OR AT ITS OPTION REPLACE, SUCH GOODS. THIS OBLIGATION WILL NOT APPLY WHERE:
- 22.1.1 NON-COMPLIANCE IS ATTRIBUTABLE TO ANY FAIR WEAR AND TEAR RELATING TO THE GOODS;
- 22.1.2 THE GOODS HAVE BEEN IMPROPERLY ALTERED IN ANY WAY WHATSOEVER, OR HAVE BEEN SUBJECT TO MISUSE OR UNAUTHORIZED REPAIR;
- 22.1.3 THE GOODS HAVE BEEN IMPROPERLY INSTALLED OR CONNECTED;
- 22.1.4 ANY MAINTENANCE REQUIREMENTS RELATING TO THE GOODS HAVE NOT BEEN COMPLIED WITH;
- 22.1.5 ANY INSTRUCTIONS AS TO STORAGE OF THE GOODS HAVE NOT BEEN COMPLIED WITH IN ALL RESPECTS; OR
- 22.1.6 BUYER HAS FAILED TO NOTIFY SUPPLIER OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, OR WITHIN FOURTEEN DAYS OF THE SAME COMING TO THE KNOWLEDGE OF BUYER WHERE THE DEFECT IS NOT ONE WHICH SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.
- 22.2 SUPPLIER'S OBLIGATION UNDER **CLAUSE 22.1** IS SUBJECT TO THE GOODS BEING RETURNED, IF SUPPLIER SO REQUIRES, BY BUYER TO SUPPLIER CARRIAGE PAID. SUPPLIER WILL REFUND TO BUYER THE COST OF CARRIAGE ON THE RETURN OF ANY SUCH DEFECTIVE GOODS IF BUYER'S WARRANTY CLAIM IS SUBSTANTIATED TO THE REASONABLE SATISFACTION OF SUPPLIER, AND WILL DELIVER ANY REPAIRED OR REPLACEMENT GOODS TO BUYER AT SUPPLIER'S OWN EXPENSE.
- 22.3 ANY GOODS WHICH HAVE BEEN REPLACED WILL BELONG TO SUPPLIER. ANY REPAIRED OR REPLACEMENT GOODS WILL BE LIABLE TO REPAIR OR REPLACEMENT UNDER THE TERMS SPECIFIED IN THIS CLAUSE FOR THE UNEXPIRED PORTION OF THE TWELVE MONTH PERIOD FROM THE ORIGINAL DATE OF DELIVERY OF THE REPLACED GOODS PROCESS.
- PART C - SERVICES**
- 23. Quantity and Description of the Services**
- 23.1 The quantity and description of the Services will be as set out in Supplier's acknowledgement of order.
- 23.2 All samples, drawings, descriptive matter, specifications and advertising issued by Supplier and any descriptions or illustrations contained in Supplier's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them. They will not form part of the Contract.
- 23.3 Supplier may make any changes to the Specification which:
- 23.3.1 are required to conform with any applicable safety or other statutory or regulatory requirements; or
- 23.3.2 do not materially affect their quality or performance.
- 24. Price of the Services**
- 24.1 The price for the Services will be the price specified in the acknowledgement of order and is exclusive of any value added tax or other applicable sales tax or duty which will be added to the sum in question.
- 24.2 Supplier will be entitled to increase the price of the Services following any changes in the Specification made at the request of Buyer and agreed by Supplier or to cover any extra expense as a result of Buyer's instructions or lack of instructions, or to comply with the requirements referred to in **clause 23.3.1**.
- 25. Performance of the Services**
- 25.1 The Services will be performed at the Service Point.
- 25.2 Performance of the Services will be made during Supplier's usual business hours.
- 25.3 Supplier will use reasonable endeavors to deliver and perform each of Buyer's orders for the Services within the time agreed when Buyer places an order and Supplier provides the acknowledgement of order and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence. If, despite those endeavors, Supplier is unable for any reason to fulfill any performance on the specified date, Supplier will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Supplier have any liability to Buyer for any delay or failure in performance except as set out in this condition. Any delay in performance will not entitle Buyer to cancel the Contract unless and until Buyer has given one hundred and twenty days' written notice (or such longer period specified in the written acknowledgement of Contract) to Supplier requiring the performance to be made and Supplier has not fulfilled the performance within

that period. If Buyer cancels the Contract in accordance with this clause then:

25.3.1 Supplier will refund to Buyer any sums which Buyer has paid to Supplier in respect of that Contract or part of the Contract which has been cancelled and has not been delivered or is not ready for delivery; and

25.3.2 Buyer will be under no liability to make any further payments under clause 4.1 in respect of that Contract or part of the Contract which has been cancelled.

25.4 If Buyer fails to provide any instructions, documents, licenses or authorizations required to enable the Services to be performed on time (except solely on account of Supplier's default), the Services will be deemed to have been performed on the due date

25.5 Buyer shall provide or procure the provision to Supplier of all facilities and such other assistance and services as may be necessary to the extent and quality necessary to enable Supplier to fulfill its obligations under the Contract. This assistance shall include (but not be limited to) the timely provision of and access to information, data, accommodation, computing resources, appropriate Buyer employees and a safe working environment.

26. Warranty for the Services

26.1 SUPPLIER WILL, FREE OF CHARGE, WITHIN A PERIOD OF TWELVE MONTHS FROM THE DATE OF PERFORMANCE OF SERVICES WHICH ARE PROVED TO THE REASONABLE SATISFACTION OF SUPPLIER TO NOT COMPLY WITH SPECIFICATION DUE TO DEFECTS IN WORKMANSHIP REPAIR OR, AT ITS OPTION, RE-PERFORM SUCH SERVICES. THIS OBLIGATION WILL NOT APPLY WHERE BUYER HAS FAILED TO NOTIFY SUPPLIER OF ANY DEFECT OR SUSPECTED DEFECT WITHIN FOURTEEN DAYS OF THE DELIVERY WHERE THE DEFECT SHOULD BE APPARENT ON REASONABLE INSPECTION, OR WITHIN FOURTEEN DAYS OF THE SAME COMING TO THE KNOWLEDGE OF BUYER WHERE THE DEFECT IS NOT ONE WHICH SHOULD BE APPARENT ON REASONABLE INSPECTION, AND IN ANY EVENT NO LATER THAN TWELVE MONTHS FROM THE DATE OF DELIVERY OR PERFORMANCE.

PART D - DEFINITIONS AND INTERPRETATION

27. Definitions and Interpretation

27.1 In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Business Day" any day other than a Saturday or Sunday or a public or bank holiday in the country that Supplier is located.

"Confidential Information" all information in respect of the business of Supplier including, without prejudice to the generality of the foregoing, any ideas, business methods, prices, business, financial, marketing, development or manpower plans, customer lists or details, computer systems and software, products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by Supplier and information concerning Supplier's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Supplier and of such persons and any other information which, if disclosed, will be liable to cause harm to Supplier.

"Contract" any contract between Supplier and Buyer for the sale and purchase of the Goods or supply of the Services formed in accordance with clause 1.

"Delivery Point" the place where delivery of the Goods is to take place under clause 19.1.

"Documentation" in relation to any Works, any instructions or procedures, instruction manuals, user guides and other information which is or ought to be supplied by Supplier to Buyer including information recorded or stored by any means whatsoever on any media whatsoever (including in writing or other

"Force Majeure"

visible form; on tape or disc; by mechanical or electrical, electronic, magnetic or optical means; and whether or not such reproductions will result in a permanent record being made).

any cause preventing Supplier from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of Supplier including, without limitation, strikes, lockouts or other industrial disputes (whether involving the workforce of Supplier or otherwise), protest, act of God, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors.

"Goods"

any goods which Supplier supplies to Buyer (including any of them or any part of them) under a Contract including the Software.

"Intellectual Property Rights"

all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United States and all other countries in the world and together with all renewals and extensions.

"Liability"

Any liability whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise in respect of any loss or damage howsoever caused, and including without prejudice to the generality of the foregoing any liability of Supplier arising under any indemnity.

"Services"

any services which Supplier provides to Buyer (including any part of them).

"Service Point"

the place at which the Services are to be performed.

"Software"

the Supplier's Software and the Third Party Software

"Specification"

in relation to the Goods, the Supplier's equipment design specification for the Goods or the equivalent third party specification for Goods of third party origin; or in relation to the Services, the Supplier's documents detailing the requirements of the Services. Any other specifications or documents describing the requirements of or the performance of the Works are only part of the Contract if referenced on the Supplier's order acknowledgement.

"Supplier's Software"

the Supplier's software either specified in a Contract or supplied with the Goods.

"Terms and Conditions"

the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Parties.

"Third Party Software"

software (other than the Supplier's Software) which is specified in a Contract or supplied with the Goods.

"Works"

Goods or Services or both as the context may require.

27.2 The headings in these Terms and Conditions are for convenience only and will not affect their construction or interpretation.

EXHIBIT D

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED

COMPANIES AFFORDING COVERAGE

ADDRESS

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> Consultant's PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days' written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____

 Authorized Insurance Representative

TITLE : _____
 AGENCY : _____ Address : _____
