

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

ENGHOUSE NETWORKS LLC

Fiber Management Project; RFP No. 1744

THIS PROFESSIONAL CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date"), by and between the CITY OF RIVERSIDE ("City"), a California charter city and municipal corporation and ENGHOUSE NETWORKS LLC, a Delaware corporation authorized to do business in California ("Consultant").

1. **Scope of Services.** City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services more particularly described in Exhibit "A," "Scope of Services" ("Services"), attached hereto and incorporated herein by reference, in conjunction with Fiber Management Project; RFP No. 1744 ("Project").

2. **Term.** This Agreement shall be effective on the date first written above and shall remain in effect for three (3) years from the Effective Date, unless otherwise terminated pursuant to the provisions herein.

3. **Compensation/Payment.** Consultant shall perform the Services under this Agreement for the total sum not to exceed Three Hundred Thirty-Four Thousand Seven-Hundred Fifty Dollars (\$334,750.00), payable in accordance with the terms set forth in Exhibit "B." Said payment shall be made in accordance with City's usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 4 hereof.

4. **Notices.** Any notices required to be given, hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

To City

Public Utilities Department  
City of Riverside  
Attn: Darlene Trujillo-Elliot  
3780 Market Street  
Riverside, CA 92501

To Consultant

Enghouse Networks LLC  
Attn: Vince Mifsud  
80 Tiverton Court, Suite 800  
Markham, Ontario, Canada L3R 0G4

5. **Prevailing Wage.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

6. **Contract Administration.** A designee of the City will be appointed in writing by the City Manager or Department Director to administer this Agreement on behalf of City and shall be referred to herein as Contract Administrator.

7. **Standard of Performance.** While performing the Services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Metropolitan Southern California Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise.

8. **Personnel.** Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in Exhibit "C" attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to City approval.

9. **Assignment and Subcontracting.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Consultant acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval. Consultant shall not subcontract any portion of the work required by this Agreement without prior written approval by the responsible City Contract Administrator. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including without limitation, the insurance obligations set forth in Section 12. The Consultant acknowledges and agrees that the City is an intended beneficiary of any work performed by any subcontractor for purposes of establishing a duty of care between any subcontractor and the City.

10. **Independent Contractor.** In the performance of this Agreement, Consultant, and Consultant's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Consultant acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Consultant, or to Consultant's employees, subcontractors and agents. Consultant, as an independent contractor, shall be responsible for any and all taxes that apply to Consultant as an employer.

**11. Indemnification.**

**11.1 Design Professional Defined.** For purposes of this Agreement, "Design Professional" includes the following:

- A. An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.
- B. An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.
- C. An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.
- D. An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

**11.2 Defense Obligation For Design Professional Liability.** Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. Consultant will reimburse City for reasonable defense costs for claims arising out of Consultant's professional negligence based on the percentage of Consultant's liability. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

**11.3 Indemnity For Design Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect and hold harmless the City and the City's employees, officers, managers, agents, and Council Members ("Indemnified Parties") from and against any and all claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding,

damage, cost, expense (including counsel and expert fees), judgment, civil fines and penalties, liabilities or losses of any kind or nature whatsoever to the extent the same arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, or anyone employed by or working under the Consultant or for services rendered to the Consultant in the performance of the Agreement, notwithstanding that the City may have benefited from its work or services and whether or not caused in part by the negligence of an Indemnified Party.

#### **11.4 Defense Obligation For Other Than Design Professional Liability.**

Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings which arise out of, or relate to, or are in any way connected with: 1) the Services, work, activities, operations, or duties of the Consultant, or of anyone employed by or working under the Consultant, or 2) any breach of the Agreement by the Consultant.

This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that any or all of the Parties to be Defended were actively, passively, or concurrently negligent, or which otherwise assert that the Parties to be Defended are responsible, in whole or in part, for any loss, damage or injury. Consultant agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to City. This obligation to defend as set forth herein is binding on the successors, assigns and heirs of Consultant and shall survive the termination of Consultant's Services under this Agreement.

#### **11.5 Indemnity For Other Than Design Professional Liability.** Except as to the sole negligence or willful misconduct of the City, Consultant agrees to indemnify, protect and hold harmless the Indemnified Parties from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with the performance of the Services, work, activities, operations or duties of the Consultant, or anyone employed by or working under the Consultant or for services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

## **12. Insurance.**

### **12.1 General Provisions.** Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

#### **12.1.1 Limitations.** These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations under Section 11 hereof.

**12.1.2 Ratings.** Any insurance policy or coverage provided by Consultant or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

**12.1.3 Cancellation.** The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

**12.1.4 Adequacy.** The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

**12.2 Workers' Compensation Insurance.** By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

**12.3 Commercial General Liability and Automobile Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Consultant against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Consultant. The City, and its officers, employees and agents, shall be named as additional insureds under the Consultant's insurance policies.

**12.3.1** Consultant's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

12.3.2 Consultant's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Consultant's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Consultant's performance of this Agreement, which vehicles shall include, but are not limited to, Consultant owned vehicles, Consultant leased vehicles, Consultant's employee vehicles, non-Consultant owned vehicles and hired vehicles.

12.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

12.3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Consultant will be considered primary and not contributory to any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

12.4 **Errors and Omissions Insurance.** Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from the Consultant's activities.

12.5 **Subcontractors' Insurance.** Consultant shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request,

Consultant shall provide City with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.

13. **Business Tax.** Consultant understands that the Services performed under this Agreement constitutes doing business in the City of Riverside, and Consultant agrees that Consultant will register for and pay a business tax pursuant to Chapter 5.04 of the Riverside Municipal Code and keep such tax certificate current during the term of this Agreement.

14. **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

15. **City's Right to Employ Other Consultants.** City reserves the right to employ other Consultants in connection with the Project. If the City is required to employ another consultant to complete Consultant's work, due to the failure of the Consultant to perform, or due to the breach of any of the provisions of this Agreement, the City reserves the right to seek reimbursement from Consultant.

16. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

17. **Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant, except as otherwise directed by City's Contract Administrator. Nothing furnished to Consultant which is otherwise known to the Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production, website, or other similar medium without the prior written consent of the City.

18. **Ownership of Documents.** All reports, maps, drawings and other contract deliverables prepared under this Agreement by Consultant shall be and remain the property of City. Consultant shall not release to others information furnished by City without prior express written approval of City.

19. **Copyrights.** Consultant agrees that any work prepared for City which is eligible for copyright protection in the United States or elsewhere shall be a work made for hire. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to provide all assistance reasonably requested by City in the establishment, preservation and enforcement of its copyright in such work, such assistance to be provided at City's expense but



without any additional compensation to Consultant. Consultant agrees to waive all moral rights relating to the work developed or produced, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

20. **Conflict of Interest.** Consultant, for itself and on behalf of the individuals listed in Exhibit "C," represents and warrants that by the execution of this Agreement, they have no interest, present or contemplated, in the Project affected by the above-described Services. Consultant further warrants that neither Consultant, nor the individuals listed in Exhibit "C" have any real property, business interests or income interests that will be affected by this project or, alternatively, that Consultant will file with the City an affidavit disclosing any such interest.

21. **Solicitation.** Consultant warrants that Consultant has not employed or retained any person or agency to solicit or secure this Agreement, nor has it entered into any agreement or understanding for a commission, percentage, brokerage, or contingent fee to be paid to secure this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement without liability and pay Consultant only for the value of work Consultant has actually performed, or, in its sole discretion, to deduct from the Agreement price or otherwise recover from Consultant the full amount of such commission, percentage, brokerage or commission fee. The remedies specified in this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

22. **General Compliance With Laws.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the Scope of Services and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside.

23. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as may be specifically, provided in this Agreement or as may be otherwise agreed in writing.

24. **Amendments.** This Agreement may be modified or amended only by a written agreement and/or change order executed by the Consultant and City.

25. **Termination.** City, by notifying Consultant in writing, shall have the right to terminate any or all of Consultant's services and work covered by this Agreement at any time. In the event of such termination, Consultant may submit Consultant's final written statement of the amount of Consultant's services as of the date of such termination based upon the ratio that the work completed bears to the total work required to make the report complete, subject to the City's rights under Sections 15 and 26 hereof. In ascertaining the work actually rendered through the termination



date, City shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivered to City.

25.1 Other than as stated below, City shall give Consultant thirty (30) days' prior written notice prior to termination.

25.2 City may terminate this Agreement upon fifteen (15) days' written notice to Consultant, in the event:

25.2.1 Consultant substantially fails to perform or materially breaches the Agreement; or

25.2.2 City decides to abandon or postpone the Project.

26. **Offsets.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

27. **Successors and Assigns.** This Agreement shall be binding upon City and its successors and assigns, and upon Consultant and its permitted successors and assigns, and shall not be assigned by Consultant, either in whole or in part, except as otherwise provided in paragraph 9 of this Agreement.

28. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court, County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorney's fees and costs.

29. **Nondiscrimination.** During Consultant's performance of this Agreement, Consultant shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Consultant agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

30. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term,

condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.

31. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions hereof and thereof.

32. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

33. **Interpretation.** City and Consultant acknowledge and agree that this Agreement is the product of mutual arms-length negotiations and accordingly, the rule of construction, which provides that the ambiguities in a document shall be construed against the drafter of that document, shall have no application to the interpretation and enforcement of this Agreement.

33.1 Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of the Agreement or any of its terms. Reference to section numbers, are to sections in the Agreement unless expressly stated otherwise.

33.2 This Agreement shall be governed by and construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.

33.3 In the event of a conflict between the body of this Agreement and Exhibit "A" - Scope of Services hereto, the terms contained in Exhibit "A" shall be controlling.

34. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

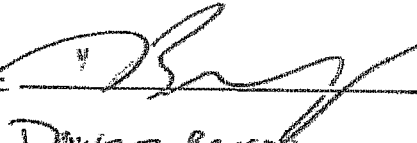
- Exhibit "A" - Scope of Services
- Exhibit "B" - Compensation
- Exhibit "C" - Key Personnel

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation  
a California corporation

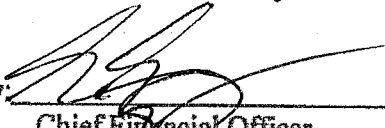
ENGHOUSE NETWORKS LLC,  
a Delaware corporation authorized to do  
business in California


By: \_\_\_\_\_  
City Manager

By:   
\_\_\_\_\_  
Douglas Bayson  
[Printed Name]  
CORPORATE SECRETARY  
\_\_\_\_\_  
[Title]


Attest: \_\_\_\_\_  
City Clerk

Certified as to Availability of Funds:

By:   
\_\_\_\_\_  
Chief Financial Officer

By:   
\_\_\_\_\_  
Steve Sadler  
[Printed Name]  
CHAIRMAN LCEO  
\_\_\_\_\_  
[Title]

Approved as to Form:

By:   
\_\_\_\_\_  
Assistant City Attorney

**EXHIBIT "A"**

**SCOPE OF SERVICES**

*The Project is intended to be a cooperative effort of RPU staff and the Consultant. The Consultant is expected to provide all the necessary technical resources and skills, support services, and the related project management of these resources. RPU staff will provide overall project management. Day to day coordination of Consultants activities will be provided by the RPU designated Project Manager.*

**Enghouse Response:** Enghouse will provide all the technical people required to help setup, implement, train and support RPU staff on the administration and usage of NetDesigner. Any functionality not provided by the out of the box deployment will be reviewed and added into the scope of the project.

### **3.9 Project Deliverables**

#### **3.9.1 Products**

- 1. Fiber Optic Management Software*
- 2. System Administration Software*
- 3. Integration Software*
- 4. Project Management Reports*

**Enghouse Response:** We comply with the products requirements following the Notice to Proceed (NTP).

#### **3.9.2 Services**

- 1. Integration with GIS*
- 2. Integration with customer data*
- 3. Implementation and configuration of the fiber optic management software*
- 4. Training on all projects delivered*
- 5. Customer Support*

**Enghouse Response:** We comply with the products requirements following the Notice to Proceed (NTP).

##### **3.9.2.1 Customer Support**

*Vendor must provide remote and on-site customer support for end user groups and system administrators for one year after acceptance of the Fiber Management System as describer in this RFP and as negotiated between RPU and Vendor. Vendor may propose optional service level agreements for the life cycle of the proposed software and upgrades beyond the life cycle.*

**Enghouse Response:** Remote support as part of the standard technical support.

Support is provided as long as annual maintenance is current.

Support includes unlimited email, and voice communications and software upgrades. Support does not include upgrading the database and the application software.

Onsite support can be provided as required and negotiated between RPU and Enghouse.

### **3.9.3 Delivery Schedule**

1. *Project management reports will be submitted to the City for review on a biweekly basis.*
2. *At the completion of each milestone, the consultant will provide a project report and meet with RPU's project team to review accomplishments and discuss plans.*

**Enghouse Response:** We comply with the delivery schedule requirements following the Notice to Proceed (NTP).

# Master Purchase Agreement

Enghouse Networks, LLC, a Delaware limited liability company, with its principal offices located at 2095 W. Pinnacle Peak Road, Suite 110, Phoenix, AZ 85027 and The City of Riverside Public Utility District, a California Corporation, with its principal offices located at 3750 University Ave., 3<sup>rd</sup> Floor, Riverside, CA 92501 ("Customer"), made as of this 16<sup>th</sup> day of November, 2018, ("Effective Date") agree that the following terms and conditions ("Agreement") will apply to any Product / Services Order Forms ("PSOF") or any order placed by Customer and accepted by Supplier during the term of this Agreement for the purchase, license and delivery of Products, Services and Maintenance and Support Services.

## 1. TERM

The term of this Agreement is two (2) years from the date it is signed by an authorized Supplier representative, and will automatically renew for incremental one (1) year terms unless cancelled in writing at least thirty (30) days prior to the expiration of the then-current term.

## 2. DEFINITIONS

- 2.1 "Confidential Information" shall have the meaning ascribed thereto in Section 13.
- 2.2 "Concurrent Users" means the number of individual users logged onto a single Supplier Software system at any one time.
- 2.3 "Customer's Existing System" means Customer's computer equipment, associated software and peripherals that coexists with the Software and custom development.
- 2.4 "Delivery" shall have the meaning ascribed thereto in Section 6.1.
- 2.5 "Hardware" shall include but not be limited to servers, peripherals, operating system software and any related documentation.
- 2.6 "Maintenance and Support Services" is the collective reference to software support services, system certifications and re-certifications, Software updates and upgrades and other similar services provided under this Agreement.
- 2.7 "Products" shall collectively refer to Software and Hardware purchased through Supplier.
- 2.8 "Services" shall refer to custom development, training, installation, and consulting services provided by Supplier.
- 2.9 "Software" shall mean Supplier Software and any third-party software licenses (including any embedded third party software) which Supplier may resell to Customer whose end user license terms are not otherwise contained in the documents linked in Section 3.4 which are incorporated by reference as applicable. Software shall not include custom development.
- 2.10 "Software License" shall have the meaning ascribed thereto in Section 3.1.
- 2.11 "Supplier Software" shall mean software owned and developed by Supplier.
- 2.12 "UAT" or "User Acceptance Testing" shall have the meaning ascribed thereto in Section 5.7.

## 3. SOFTWARE LICENSE TERMS AND CONDITIONS

- 3.1 Rights Granted to Customer: Subject to Customer's compliance with the terms of this Agreement including, without limitation, purchase of the Software pursuant to a separately executed PSOF, Supplier grants to Customer a non-exclusive, non-transferable, perpetual license to install, use and execute the Software in object code form on a per-license basis at the location specified on the PSOF ("Software License") as may be changed by Customer from time to time upon prior written notice to Supplier, such Software License limited to the site(s), number of seats, concurrent users, agents, servers, ports, devices, managed applications, and/or copies as applicable to the Software obtained, not to exceed the number of licenses set forth on PSOFs placed pursuant to this Agreement. The Software License shall become effective upon Delivery of the Software and shall remain in force unless terminated pursuant to Section 12 of this Agreement. This right does not include permission to grant sub-licenses or otherwise transfer such rights. The Customer may make one (1) copy of the Software for non-productive backup and archival purposes only, provided that it retains or affixes the equivalent of Supplier's proprietary legend and copyrights to the copy. Additionally, the Customer may make several copies of the system documentation, excluding training manuals and materials, provided that they are for internal use only. Customer may not reverse engineer, disassemble or otherwise translate the Software License provided pursuant to this Agreement. Supplier, or any third party that owns the Software License, retains exclusive title to and all rights to the Software. The Customer acknowledges that the Software and documentation are the property of Supplier and that the only right that the Customer obtains to the Software is the right of use in accordance with the terms of this Agreement. To assist Supplier in the performance of its duties under this Agreement, to verify any license reporting requirements of Customer, and in the further protection of its proprietary rights, Customer hereby authorizes a Supplier representative to enter Customer's premises, physically or electronically, and inspect the Software License at any reasonable time with prior notice.



- 3.2 Governmental Use: All Software Licenses and documentation furnished pursuant to this Agreement were developed at private expense and are provided with RESTRICTED RIGHTS. Any use, duplication or disclosure by or for any governmental agency of the United States Government or any other jurisdiction shall be subject to the restricted rights applicable to commercial computer software under FAR Clauses 12.211, 12.212, 52.227-19 or DFARS 227.7202, 252.227-7013 as applicable or any successor provision or any other legal provisions respective of restricted rights for commercial software. Consistent with the above, all Software and third party software licensed under Section 3.4 as well as commercial computer documentation are licensed to governmental end users only as commercial items and only with those rights as are granted to all other end users under the terms and conditions set forth in this Agreement. You may not use or export the Software, third party licensed software, or documentation except as authorized by law. In particular, but without limitation, the Software or Documentation may not be exported to any U.S. embargoed country.
- 3.3 Software Title: No title to or ownership of the Software or any of its parts, the information it contains or in any applicable rights therein, such as patents, copyrights and trade secrets, is transferred to Customer. Any reference to "sale" or "purchase" of the Software shall be deemed to mean, "License on the terms contained in this Agreement." Supplier considers the information contained in the Supplier Software owned or created by Supplier to be trade secrets of Supplier and any third-party software licenses which Supplier may resell to Customer to be trade secrets of such third-party licensor. Customer agrees to treat Software as Confidential Information and shall use the same degree of care used by Customer to protect its own Confidential Information. Except as set forth herein, or as may be permitted in writing by Supplier, Customer will not: (i) provide, transmit or otherwise make available, the Software or any part or copy thereof to any third party or (ii) reverse engineer, reverse compile or reverse assemble the Software in whole or in part. Customer will not modify, adapt, translate or otherwise alter the Software. Notwithstanding the previous sentence, Customer may configure Software to meet Customer's needs and user preferences.
- 3.4 Third Party Software: Some third party software (including some imbedded software) are exclusively licensed pursuant to express end user license terms. Third party software licenses provided to Customer are provided to Customer pursuant to the terms of this agreement including without limitation this Section 3. All Third Party Products are restricted for use solely in conjunction with the particular Software intended by Licensor to be used therewith or with which Supplier provides the Third Party Product, and may not be used with any other products, or on a stand alone basis.

#### 4. PAYMENT TERMS, CREDIT TERMS, CHANGE ORDERS & TAXES

- 4.1 Payment Terms: All invoices are due Net 30 days from the invoice date unless otherwise specified on each PSOF. The prices and license fees for Products and Services ordered under this Agreement will be clearly marked on a PSOF.

Payments are due as follows:

- A. Software Product –100% invoiced upon shipment.
- B. Professional Services – Unless specified differently in detailed Statement of Work, Services will be invoiced monthly in arrears on a time and materials basis with a 50% deposit of quoted estimate upon receipt of order..
- C. Maintenance and Support Services – Maintenance and Support Services fees for the first year support term invoiced 100% upon software shipment.

All remittals made by mail should be made to the following address:

Supplier  
80 Tiverton Court, Suite 800  
Markham ON L3R 0G4

For purposes herein, the term "acceptance" shall have the meaning ascribed to the specific items (i.e. Products, installation, Functional Specification Document, and Other Services) as set forth in Section 5.

- 4.2 Credit Terms: Supplier reserves the right to refuse credit terms and require order prepayment if it is determined that Customer is or has become a credit risk or if Customer fails to make timely payments. Customer agrees to pay Supplier interest at a rate of one and one-half percent (1.5%) per month on the balance remaining unpaid, beyond the payment due date(s) set forth above. Any expenses associated with collections on past due invoices will be paid by Customer.
- 4.3 Taxes: Prices and license fees are exclusive of all sales, use, foreign export duties or any other similar taxes, however designated or levied against the sale, licensing, delivery or use of the Products. Customer will pay any such tax Supplier may be required to collect or pay to Supplier. Tax-exempt certificates should be submitted at the time of the initial order and must be updated annually. If a taxing jurisdiction determines certain items delivered to Customer under this Agreement to be taxable, Customer will reimburse Supplier for those taxes.
- 4.4 Expenses: Customer agrees to reimburse Supplier for actual, reasonable travel and out-of-pocket expenses incurred in performing the Services. All such additional amounts payable to Supplier by Customer shall be due upon receipt of the invoice.
- 4.5 Disputes: Disputes for invoiced items should be received in writing within ten (10) business days of Customer's receipt of invoice. Payment for the total amount of invoice, excluding the item(s) in dispute, will be due pursuant to the invoice terms. Supplier will use its reasonable efforts to respond to any disputed item within ten (10) business days of receipt of notice of the written dispute. Once the dispute is resolved, invoice shall be paid within ten (10) days.

- 4.6 Currency: Payment for Products and Services ordered under this Agreement, or related PSOFs or Statements of Work, will be due and payable in United States Dollars. Any currency exchange costs associated with receipt of United States Dollars by Supplier as payment under this Agreement shall be borne fully by Customer so that Supplier shall receive full payment as stated on the applicable PSOF.
- 4.7 Change in Services Scope: In all cases, quotes for Services and custom development are based upon estimates and may result in a change order if project scope, Customer project resources, Customer project schedule, hardware and software environment or any other relevant factors change beyond the scope of those originally communicated. Once the Functional Specification has been Accepted and signed by both parties, the custom development work begins. Any changes made to the Functional Specification after Acceptance will be considered a change in scope and will be handled as a change order. In the event of any changes as described above, Supplier will notify the Customer of associated custom development changes, rescheduling fees, schedule changes and corresponding costs. Supplier will not proceed with the additional work without written approval from Customer. In no event will work commence without a signed Functional Specification document.
- 4.8 Maintenance and Support Services Renewal Fees: Supplier will invoice Customer approximately sixty (60) days prior to each maintenance renewal term. Supplier will not provide Maintenance and Support Services unless all monies due for the term have been paid. Supplier reserves the right to adjust its fees charged for Maintenance and Support Services upon renewal. Maintenance and Support Services fees for additional orders will be billed on a pro-rata basis to bring the add-on order coterminous with the Customer's maintenance renewal term. No refunds or credits shall be provided to Customer for the cancellation for convenience of Maintenance and Support Services.

## 5. ORDERS, PSOF & ACCEPTANCE

- 5.1 Orders: Each Customer order issued will be governed by this Agreement and will specify installation location, quantity and description of Products to be shipped and Services to be provided. The order will be placed using a PSOF. Any PSOF signed by both parties will constitute a binding commitment by Customer to accept the Products and Services stated therein.
- 5.2 Purchase Order Terms: Should terms and conditions stated on purchase orders received under this Agreement conflict with terms and conditions stated herein, the terms and conditions of this Agreement will govern. Acknowledgment or Delivery of an order does not constitute acceptance of any additional or conflicting terms.
- 5.3 PSOF Terms: Should terms and conditions stated on a PSOF, signed by both parties, conflict with any term or condition in this Agreement, the terms and conditions stated on the PSOF shall prevail. However, any terms and conditions on any PSOF shall only apply to the order listed on that PSOF and not to any future order placed pursuant to this Agreement.
- 5.4 Products: Acceptance of Product will be upon Delivery. If Supplier deems appropriate, Customer agrees to accept partial Product shipments.
- 5.5 Installation: Installation services are deemed accepted upon written notification by Supplier of the completion of the Installation.
- 5.6 Functional Specification Document: Supplier will consult with Customer and provide a document detailing the application specifications. Customer will review and provide a complete list of changes/modifications to the design. Supplier will revise the document and provide a second pass for approval, if needed. Customer shall conduct a final review. In no event will custom development work begin without written acceptance of the Functional Specification document. Additional review cycles may impact delivery schedules and may incur additional consulting fees.
- 5.7 Services: A statement of work will accompany any order containing Services. The statement of work document will encompass the scope, price, and parameters of the application engagement. Any terms and conditions contained in the statement of work will apply only to the related order and will take precedence over the terms and conditions in this Agreement. When Supplier completes the custom development, installation and remote functional testing, Supplier will provide Customer with written notification to commence with User Acceptance Testing ("UAT"). The UAT period will be pre-defined and agreed to by both parties in the Functional Specification document, failing which it shall be ten (10) days from the date of written notice by Supplier. These Services are deemed accepted upon the earliest of (i) signed Customer acceptance of the application, (ii) expiration of the pre-defined UAT period, or (iii) upon Customer placing the Services into production. Training and consulting services are deemed accepted upon expiration or completion of the Service.

## 6. DELIVERY, TITLE, RISK OF LOSS, & SECURITY INTEREST

- 6.1 Products: Making Products available to Customer for electronic download shall constitute delivery. However, as necessary, Supplier will ship Products to Customer by common carrier as soon as practical after receipt of a PSOF. Customer will reimburse any physical transportation charges paid by Supplier. Title and risk of loss for the Products will pass to Customer upon delivery by Supplier to the common carrier ("Delivery"). Supplier will not be liable for any failure or delay in delivery, or other performance, due to any causes beyond its reasonable control.
- 6.2 Hardware: Supplier retains a purchase money security interest in all Hardware purchased through Supplier, and all additions, replacements and proceeds thereof, and all media on which the Supplier Software is stored, to secure Customer's payment obligation. Such security interest is retained until Customer's payment obligations with respect to such pieces of Hardware and Software are satisfied in full. Supplier may file this Agreement or financing statements pursuant to the Uniform Commercial Code or other applicable law to evidence or perfect Supplier's security interest. Customer agrees to execute any additional instruments Supplier deems necessary to perfect any such security interest upon receipt of written request by Supplier. Supplier will be entitled

to recover from Customer all of Supplier's reasonable costs and expenses (including court costs and reasonable attorneys' fees) in enforcing its rights to payment or its security interest under this Agreement.

## 7. INSTALLATION

- 7.1 Installation Services: Customer may purchase installation services from Supplier for any Products and/or Services ordered. As conditions to such installation, Customer will permit Supplier reasonable access to the installation site, will prepare the installation site in accordance with Supplier's site preparation specifications and will store the delivered Products at the site until the installation date.
- 7.2 Customer Responsibility: Customer will assign a knowledgeable representative to act as project manager to provide information, answer questions and make decisions on behalf of Customer. Customer is responsible for the acquisition of all peripheral equipment such as NTIs, PCs and printers and is also responsible for the initial and recurring costs of network services. Customer is responsible for installation of any local area network, host computer and telephone system connectivity required to support the Installation. Prior to Installation, Customer is responsible for providing: (i) a completed and accurate site preparation checklist; and (ii) a stable operating environment (network, host computer, servers, telephone system, etc.). In no event shall Supplier be liable for any failure or delay caused by events beyond its control, including, without limitation, the failure of Customer to furnish the necessary information to Supplier to fulfill this Agreement and/or a completed site preparation checklist or failures or substitutions of Customer's Existing System.
- 7.3 Delays: The completion and/or delivery by Supplier of certain items set forth in the PSOF are predicated on the timely delivery and/or completion of a number of interim steps by other third party suppliers and/or contractors retained by Customer. Customer will use its best efforts to ensure that it will, and shall cause its third party suppliers and/or contractors to, adhere to the timelines set forth in the project plan.

## 8. TRAINING

- 8.1 The Customer may cancel a training class registration by providing Supplier with written notice at least ten (10) business days prior to the start of the class date. If Customer purchases any training classes and/or consulting services, Customer has up to six (6) months from the date of the PSOF to schedule and complete the Services. In the event Customer fails to do so due to no fault of Supplier, all fees paid toward such classes shall not be refunded. Customer shall be responsible for all expenses incurred by its employees in connection with this training, including course fees and potential travel expenses.

## 9. WARRANTY AND MAINTENANCE POLICIES

- 9.1 Limited Software Warranty: Supplier warrants, for a period of ninety (90) days from date of Delivery, that Supplier Software will substantially conform to the published specifications prevailing at the time of purchase or Delivery. Supplier's sole obligation and liability hereunder will be to use reasonable efforts to remedy any such non-conformance which is reported to Supplier in writing within the warranty period. In the event Customer purchases Product and Services on the same PSOF, Supplier will defer the start of the Product warranty period to be coterminous with the Services warranty period.
- 9.2 Limited Services Warranty: Supplier warrants that the Services will operate in accordance with the Functional Specification document for a period of thirty (30) days from the date of Acceptance. Supplier's sole obligation and liability hereunder will be to use reasonable efforts to remedy any such non-conformance which is reported to Supplier in writing within the warranty period.
- 9.3 Limited Hardware Warranty
- A. Supplier warrants that Customer will acquire title to the Hardware being purchased hereunder free and clear of all liens and encumbrances except as set forth in Section 6.2. Supplier further warrants that the Hardware delivered hereunder will be free from material defects in material and workmanship for a period of thirty (30) days from date of Delivery.
- B. Supplier will honor this warranty on a return-to-factory basis at an authorized Supplier warranty service area. Customer will be responsible for the costs of the replacement items if the defective items are not returned, complete and properly packaged, within ten (10) days from the date of Delivery of the replacement items. Supplier's sole responsibility under this warranty will be, at Supplier's option, to repair or exchange any component that fails during the warranty period due to a material defect in workmanship and material.
- 9.4 Disclaimer of Warranty: EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION 9, PRODUCTS ARE PROVIDED BY SUPPLIER AND ACCEPTED BY THE CUSTOMER "AS IS" AND SUPPLIER GIVES TO THE CUSTOMER NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS OR THE PERFORMANCE OR RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, SUPPLIER DOES NOT WARRANT THAT PRODUCTS OR THE OPERATION THEREOF IS OR WILL BE ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET THE CUSTOMER'S REQUIREMENTS, AND SUPPLIER GIVES NO IMPLIED WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WITH REGARD TO MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE AND WHETHER ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
- 9.5 Maintenance and Support Services

- A. Maintenance and Support Services are optional; however, Software releases and technical support services are only available to those customers enrolled in the service. The Maintenance and Support Services program is detailed in Exhibit A. If Customer elects to purchase Maintenance and Support Services, the right to receive Maintenance and Support Services shall begin upon the date(s) on which the Products are Delivered and shall extend for a twelve (12) month period thereafter; subsequent Maintenance and Support Services periods extending for twelve (12) months commences immediately on expiration of the prior Maintenance period unless Supplier receives written notice of termination ninety (90) days prior to the renewal date.
- B. In the event Maintenance and Support Services are discontinued, Customer may request that Supplier reinstate such Maintenance and Support Services, which reinstatement shall be at the sole discretion of Supplier, and Customer understands that Supplier will impose a reinstatement fee in addition to the Maintenance and Support Services fees.
- C. Software releases will be delivered on a load and leave or electronically transferred basis.
- D. Software releases may contain new features and/or functionality, which license rights are not included in the price of the Maintenance and Support Services. Customer's decision to enable optional, non-essential new features and/or functionality are billable to Customer along with any labor, travel and living expenses and other costs associated with each new feature and/or functionality Customer purchases as part of a Software upgrade. Such fees are to be mutually agreed upon prior to commencement of any work. Customer is responsible for purchasing the required hardware and/or software if the release, new feature and/or functionality require upgrades in the existing Hardware and/or Software.
- E. Supplier warrants that the Maintenance and Support Services will be performed in a professional, manner in accordance with reasonable commercial standards. Customer's sole and exclusive remedy for a breach of this warranty will be Supplier's prompt performance of the Maintenance and Support Services in a manner that complies with this warranty without additional charge to Customer.
- F. Support software, including diagnostic routines as well as support tools, test equipment and documentation which may be supplied by Supplier for purposes of this Agreement are and shall, at all times, remain the exclusive property of Supplier and shall be treated by Customer as Confidential Information.
- G. Customer shall make available, at Customer's expense, secure remote access at each site for online accessibility.
- H. Maintenance and Support Services apply to the two (2) most current Software releases and Supplier assumes no responsibility for the use of superseded, outdated or uncorrected releases, save and except that Supplier shall have no liability arising as a result of its inability to provide backward compatibility of Supplier Software or Hardware due to any changes in Customer's Existing System of which it was not aware prior to delivery of the Software to Customer.
- I. There may be instances where Supplier is called upon to troubleshoot and correct errors with components of Customer's Existing System. These services are not covered under the warranty or Maintenance and Support Services. In this event, Customer will be informed that the requested services are billable and Customer will be required to approve all billable work prior to commencement.

9.6 Exclusions, Limitations, and Disclaimers

- A. Supplier's support of the Products is dependent upon the following conditions being met in their entirety. Customer agrees to control and maintain the ambient environmental conditions in which the Products and associated peripheral equipment are installed at levels between 40 degrees Fahrenheit and 80 degrees Fahrenheit with humidity not to exceed 80% and the equipment shall not be exposed to moisture or corrosive gases or materials. Customer shall also provide a dedicated, separately grounded electrical outlet, or service connection and not to locate in close proximity, any equipment which may cause interference or damage to the Products.
- B. The warranties set forth in this Section 9 will not apply to defects to the extent attributable to: (i) use of equipment, software or interfacing not furnished by Supplier; (ii) repair or modification of Products without Supplier's approval; (iii) accident, neglect, misuse or abuse; or (iv) exposure to conditions outside the range of the environmental, power and operating specifications provided by Supplier. This Agreement does not cover, and Supplier shall have no responsibility to correct failures, errors and problems with respect to Products that result from any relocation, accident, neglect, misuse, abuse, exposure to environmental conditions outside those specified herein or fire, flood, terrorist act or other act of God or failures caused by changes in the Customer's Existing System.
- C. This Agreement does not cover customer developed applications or any custom development modified by the Customer or any unapproved third party. In the event Customer, or any third party, makes any modifications or alterations other than functions related to normal system administration to the custom development, further support of the affected custom development will be provided on a time and materials basis at Supplier's prevailing time and material rates plus travel expenses and other related costs. Support will resume for the balance of the term if Supplier is able to remedy the problem, stabilize the affected custom development, or return such software to its original condition. The Maintenance and Support Services term will not be extended and Customer shall not receive any credit or refund of any Maintenance and Support Services fees paid.

## 10. LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS FOR PERSONAL INJURY AND FOR ANY MATTER IN WHICH IT WOULD BE UNLAWFUL TO LIMIT, IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, ACCOUNT, PROFIT, BARGAIN, OR BUSINESS OR FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHER LEGAL THEORY. SUPPLIER'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO [A] IN THE CASE OF SUPPLIER SOFTWARE, THE GREATER OF (i) PURCHASE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS UNDER THE SPECIFIC PSOF RELATING TO THE CLAIM OR (ii) THE PRIOR TWELVE (12) MONTH PAYMENT INCURRED BY THE CUSTOMER FOR THE SUPPLIER SOFTWARE LICENSE FEE OR (iii) THE PRIOR TWELVE (12) MONTH PAYMENT INCURRED BY THE CUSTOMER FOR MAINTENANCE AND SUPPORT SERVICES, AS APPLICABLE; AND [B] IN THE CASE OF THIRD PARTY SOFTWARE, THE GREATER OF (i) PURCHASE PRICE PAID BY THE CUSTOMER FOR ANY THIRD PARTY SOFTWARE PURCHASED IN THE PRIOR TWELVE (12) MONTH PERIOD OR (ii) THE PRIOR TWELVE (12) MONTH PAYMENT INCURRED BY THE CUSTOMER FOR MAINTENANCE AND SUPPORT SERVICES ON THE THIRD PARTY SOFTWARE. SUPPLIER SHALL HAVE NO LIABILITY FOR ANY CUSTOM DEVELOPMENT. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION HEREUNDER MAY BE BROUGHT BY EITHER PARTY MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, EXCEPT FOR AN ACTION FOR NON-PAYMENT OF A PURCHASE PRICE OR LICENSE FEE FOR A PRODUCT. THE CUSTOMER AGREES THAT IT HAS READ AND UNDERSTOOD THIS SECTION 10. IN CASE OF ANY CONFLICT BETWEEN THIS SECTION 10 AND ANY OTHER SECTION OF THIS AGREEMENT, THE PROVISIONS OF THIS SECTION 10 SHALL PREVAIL. FOR THE AVOIDANCE OF ANY DOUBT, THIS SECTION 10 SHALL REMAIN IN FULL FORCE AND EFFECT NOTWITHSTANDING THE TERMINATION, REPUDIATION OR EXPIRY OF THIS AGREEMENT.

## 11. INFRINGEMENT INDEMNITY

- 11.1 Subject to the limitations below, Supplier will indemnify Customer against any judgment, including costs and direct damages, rendered by a court of competent jurisdiction, against Customer which definitively concludes that the Software infringes an existing patent, trademark, copyright or trade secret. Customer agrees to provide written notice to Supplier of the initiation of any such suit or proceeding, provide full authority, information, and assistance for defense, and permit Supplier to assume defense upon Supplier's request. Customer agrees that Supplier shall be relieved of its obligations under this Section 11.1, unless Customer notifies Supplier of such Claim within ten (10) days after Customer's receipt thereof and gives Supplier the authority to proceed as contemplated herein and, at Supplier's expense (except as provided below), gives Supplier the relevant information then in its possession and reasonable assistance for Supplier, in Supplier's discretion, to settle and/or defend any such Claim.
- 11.2 If the Software becomes the subject of such an infringement Claim, or if it is determined by adjudication that the Software infringes same or if the sale or use of the Software is enjoined, then Supplier may, at its option and expense either (a) procure for Customer the right to continue to use the Software; (b) replace the Software with other suitable and reasonably equivalent Software or parts thereof so that the Software becomes non-infringing; (c) suitably modify the Software so that the Software becomes non-infringing, or (d) if it is not commercially reasonable to take the actions specified in items (a), (b), or (c), terminate this Agreement and refund all associated license fees previously paid to Supplier by Customer, subject to a three (3) year straight line depreciation.
- 11.3 Supplier shall not be liable for any compromise entered or settlement made by Customer without Supplier's prior written consent. In addition, Supplier shall not be liable for any losses, costs, or damages, and Customer will indemnify, defend, and hold Supplier harmless from any expenses, damages, costs, or losses resulting from any suit or proceeding based upon a claim arising from (1) compliance with Customer's or End-User's supplied designs, specifications, or instructions; (2) a modification of the Software by a party other than Supplier; (3) the combination, operation, or use of the Software with any other product, data, or apparatus not provided by Supplier; (4) the use of a superseded release of the Software if the infringement would have been avoided by the use of a current release of the Software provided or made available to Customer; (5) the use of such Supplier Software to practice any method or process which does not occur wholly within the Supplier Software; or (6) use of the Software in a manner otherwise as provided for in this Agreement. The license of any Software pursuant to this Agreement does not confer upon End User any license under any patent rights or copyrights.

## 12. TERMINATION

- 12.1 For Breach: The non-breaching party will have the right to terminate this Agreement and any PSOF or orders hereunder if the other party neglects or fails to perform or observe any of its obligations under this Agreement and such failure is not cured within thirty (30) days of receipt of written notice thereof. Supplier will have the right to terminate Customer's license if Customer fails to pay any and all required license fees, attempts a transfer or assignment of a license of the Software except as expressly herein permitted or otherwise materially breaches this Agreement. Customer agrees, upon expiration of the license term or upon proper notice of such termination, to immediately return the Software and Hardware and any portion and copy thereof in all forms, partial or complete, as directed by Supplier and, if requested by Supplier, to certify in writing by a duly authorized representative of the Customer as to the return of the Software and any copy thereof.
- 12.2 Convenience by Customer: Customer may terminate this Agreement at any time with thirty (30) days advance written notice. In the event Customer terminates this Agreement prior to the expiration of the then-current Maintenance and Support Service term, Customer shall not receive a prorated refund of any Maintenance and Support Services fees paid. Termination of this Agreement does not relieve any payment obligations due for Products delivered or Services performed. Upon receipt of such notice, Supplier will inform Customer of the extent to which Product has been delivered and Services have been completed through such termination

date. Customer must pay Supplier for all Product Delivered and Services performed through the date of termination, provided that such payment shall not be greater than the payment that would have become due if the order as stated on the relative PSOF had been completed.

- 12.3 Convenience by Supplier: Supplier may terminate this Agreement at any time with ninety (90) days advance written notice. In the event Supplier terminates this Agreement prior to the expiration of the then-current Maintenance and Support Services term, Customer shall receive a prorated refund of all fees paid toward the undelivered Maintenance and Support Services.
- 12.4 Insolvency: Either party may terminate this Agreement or any PSOF, at any time, by written notice, in the event that the other files a voluntary petition in bankruptcy or under any similar insolvency law; makes an assignment for the benefit of creditors; has filed against it any involuntary petition in bankruptcy or under any similar insolvency law; or a receiver is appointed for, or a levy or attachment is made against, substantially all of its assets, if any such petition is not dismissed or such receiver or levy attachment is not discharged within sixty (60) days after the filing or appointment.
- 12.5 Continuing Obligations: In the event of expiration or termination of this Agreement, the provisions of this Agreement that by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied.

### 13. CONFIDENTIAL INFORMATION

- 13.1 Each party acknowledges that, in the course of performing its duties under this Agreement, it may obtain information relating to the other party, which is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, this Agreement, pricing and proposals, computer software, trade secrets, know-how, inventions, techniques, processes, programs, schematics, data, customer lists, financial information and sales and marketing plans. Each party shall at all times maintain in the strictest confidence and trust all such Confidential Information, which shall not be less than those measures employed by each party in protecting its own Confidential Information of equivalent value. Customer and its employees agree not to disclose such information to any third party.
- 13.2 The commitments set forth above shall not apply to any Confidential Information which:
  - a) is now generally known or available or which hereafter through no act or failure on the part of the receiving party becomes generally known or available;
  - b) is legally known to the receiving party at the time of receiving such information;
  - c) is hereafter furnished to the receiving party by a third party without restriction on disclosure, where such third party legally obtained such information and the right to disclose it to the receiving party; or
  - d) is independently developed by the receiving party without violation of any legal rights which the disclosing party may have in such information.
- 13.3 Except as may be required by applicable law, including in response to a request made under the California Public Records Act (California Government Code sections 6250 et seq b)Both Parties agree that all Confidential Information disclosed hereunder shall remain the property of the Discloser and may only be copied or reproduced as expressly permitted herein. Upon expiration or termination of this Agreement, Recipient shall return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. All Confidential Information disclosed hereunder is provided by Discloser without representation or warranty of any kind.
- 13.4 Except as may be required by applicable law, neither Party shall disclose to any third party the contents of this Agreement, or any amendments hereto without the prior written consent of the other Party.

Where the parties have entered into a separate confidential non-disclosure agreement ("NDA") and the terms of the NDA are inconsistent with the terms contained herein, the terms of the NDA shall take precedence.

### 14. GENERAL

- 14.1 Assignment: The interests of Customer in this Agreement are personal and shall not be assigned, transferred, shared or divided in any manner by Customer without the prior written consent of Supplier. Neither this Agreement nor any rights under it may be assigned by Customer without Supplier's prior written consent. Any merger, consolidation, or change of ownership or controlling voting interest ("Change of Control Event") of Customer shall be deemed an assignment under this agreement. Supplier will only consent to assignment if Customer has paid Supplier all amounts due under this Agreement and the assignee agrees to be bound by the terms and conditions of this Agreement. Supplier shall be entitled to assign this Agreement and the rights granted hereunder to any affiliate, subsidiary or successor in interest to Supplier's business.
- 14.2 Solicitation: During the term of this Agreement and for a period of one (1) year following its termination, Customer agrees that it will not, without the written permission of Supplier, directly or indirectly, solicit, hire or otherwise engage the services of any person who is an employee of or is otherwise being utilized as a consultant or contractor by Supplier. The foregoing will not prohibit general solicitations for employment not specifically directed towards employees of Supplier.
- 14.3 Force Majeure: Neither party shall be liable for any failure or delay (other than failure to make payment) caused by events beyond its control, including, without limitation, sabotage, failures or delays in transportation or communications, labor disputes, accidents,

shortages of labor, fuel, raw materials or equipment, terrorist act, other actions or inactions of third-parties or technical failures. If Supplier should fail to make any delivery provided for herein as a result of any such event or circumstance beyond its own direct control, Supplier shall have the right to make delivery within a reasonable time after the cause of such delay has been removed, and Customer shall be obligated to accept deferred Delivery, it being agreed that upon the occurrence of any such circumstance or event beyond Supplier's direct control, the time for Delivery by Supplier shall be extended by the number of days of delay attributable to any such circumstance or event.

- 14.4 Governing Law: The laws of ~~California~~Indiana, excluding its conflict of laws provisions, shall govern this Agreement. ~~California~~Indiana courts shall have exclusive jurisdiction under this Agreement. In the event either party hereto institutes an action or other proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding shall be paid all reasonable costs and attorney's fees by the other party.
- 14.5 Severability and Waiver: If a court of competent jurisdiction holds any provision in this Agreement to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way, and an a court of competent jurisdiction is authorized to modify the affected provision to preserve the parties' intended benefits to the fullest extent permitted by law. Either party's failure, at any time, to require the other party's performance of any provision of this Agreement shall in no way affect that party's right to enforce such provision, nor shall either party's waiver of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.
- 14.6 Notice: Any notice, approval, request, authorization, direction or other communications under this Agreement will be given in writing to the parties at the address set forth in the beginning of this Agreement, shall reference this Agreement and will be deemed to have been received: (i) on the delivery date if delivered by confirmed facsimile; (ii) on the delivery date if delivered personally to the party to whom the same is directed; (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt or (iv) three (3) business days after the mailing date, if sent properly addressed, return receipt requested, postage and charges prepared by First Class U.S. mail or any other means of rapid mail delivery of which a receipt confirming the foreign is produced. Either party may change its address by notifying the other party in writing as provided herein.
- 14.7 Exports: Customer understands that Supplier is subject to regulations promulgated by United States governmental agencies concerning the export of products. Regardless of any disclosure Customer makes to Supplier of an ultimate destination of any Products purchased or licensed hereunder, Customer warrants that it will not export in any manner, either directly or indirectly, any Software or other Product provided to Customer hereunder without first obtaining written authorization from Supplier and all necessary approval from appropriate United States governmental agencies.
- 14.8 Full Agreement: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to Supplier licensing the Software to Customer and contains all the covenants and agreements between the parties with respect to the licensing of such Software. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

**EACH PARTY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. AGREED TO BY AUTHORIZED REPRESENTATIVES OF CUSTOMER AND SUPPLIER AS FOLLOWS:**

**ENGHOUSE NETWORKS, LLC**

**THE CITY OF RIVERSIDE PUBLIC UTILITY DISTRICT**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## Support and Maintenance Services NetDesigner

### Notice of Disclaimer

The information provided herein is directed solely to individuals who have the appropriate degree of experience to understand and interpret its contents in accordance with generally accepted principles of engineering or other professional standards and applicable regulations. No recommendation is made or should be inferred as to third party products or services. While the information contained herein has been prepared from sources deemed to be reliable, Enghouse Networks Limited ("Enghouse") makes no representation to this effect. Enghouse reserves the right to revise any information contained in this document but has no obligation to do so.

Enghouse's obligations and responsibilities regarding Enghouse products and services, including the Limitation of Liability, are governed solely by the agreements under which they are sold or licensed. Unless the recipient has been expressly granted a license by Enghouse in a prior writing, no license, expressed or implied, is granted under any patents, copyrights or other intellectual property rights. Use of this information is at your discretion and shall not be deemed an inducement by Enghouse to infringe any existing or later-issued patent, copyrights or other intellectual property right.

### Definitions

The following definitions apply to this document and are equally applicable to both the singular and plural derivations of the terms defined:

**Agreement** Refers to the Master Purchase Agreement (MPA).

**Customer** Any entity entitled to software support after the purchase of an Enghouse software product, or because of a special contractual agreement with Enghouse.

**Custom Application Programs** Software application programs that Enghouse develops to the Customer's written application specifications and provides to the Customer pursuant to a Statement of Work. Custom Application Programs do not include software, programming routines or subroutines not unique to the Customer's application, or any other program, routine, or subroutine developed prior to or outside the scope of a Statement of Work.

**Defect** A flaw and/or omission in the software code and/or documentation of an Enghouse product.

**Fix** A temporary or permanent solution provided by Enghouse in response to any defect reported by the Customer.

**Documentation** User manuals, system installation, administration guides and other materials generally available from Enghouse for use in connection with the Software.

**Hardware** Any third party equipment or hardware such as computer desktops, switches, servers, storage devices including storage area network devices if supplied by Enghouse under Agreement.

**Maintenance/Support** The terms Maintenance and Support may be interchangeably used to refer to system support services and other similar services provided under the Agreement, to keep the system running to the specified operational levels and in case of failures, to restore the system to those same operational levels. Maintenance and/or Support does not include support services for Custom Application Programs unless otherwise specified in a PSOF.

**Major Release** A software upgrade. Major releases are identified with an incremental new version number to the left of the decimal point; for example X.(x).

**Software** Enghouse's and any third party embedded software licensed to the Customer pursuant to the Agreement.

**Software Release** Any version of the Software including updates or upgrades that may either be specifically provided to the Customer or generally available.

**Software License Agreement** A separate agreement between Enghouse and the Customer relating to the licensing of the Software.

**Statement of Work** A separate agreement between Enghouse and the Customer relating to the provisioning of professional services including custom application development.

**System** Any combination of Software and/or Hardware and/or Third Party Software that have been purchased from Enghouse and deployed at the Customer's site(s).

**Response Time** The time measured between the call from the Customer, received by Enghouse, and the time of the first telephone reply by one of the Enghouse experts.

**Resolution** Steps taken to close a Defect. These steps could include code changes, documentation changes, or reclassification of a defect.

**Resolution Time** The time measured between the call from the Customer, received by Enghouse, provided Enghouse receives adequate remote access to the product, and the time when the problem is definitively remedied.

**Third Party Software** Any embedded third party software in machine-readable object code format that is required to make the Software operational.

**Update** A software load, when and if generally available, that provides patches, fixes and minor enhancements that may slightly improve pre-existing baseline performance.

**Upgrade** A software load, when and if generally available, that provides added new features, added new functions, and/or major enhancements intended to significantly improve performance of the existing load.

**Version** The initial version of the Software provided to the Customer and any subsequent chargeable elements of the Software which contain additional features and/or functionality. For example, version X.(x) with the number to the left of the decimal point in parentheses identifying the version of the Software supplied by Enghouse.

## **Introduction**

Enghouse provides a comprehensive support strategy for all Software and Hardware purchased from Enghouse while under an active support services plan. The primary objective of the Enghouse Technical Support Services offering is to keep the system running to specified operational levels and in case of failures, to restore the System to those same operational levels as soon as possible.

## **Enghouse Support Center**

The Enghouse Support Center is designed to provide Customers with technical resources required to effectively support Systems purchased and deployed from Enghouse. Customer Support Representatives (CSRs) are product experts, trained to help customers diagnose and resolve, in a timely and efficient manner, any technical issue which may arise in connection with the System deployed by Enghouse.

Following contact with the Enghouse Support Centre and a CSR and/or receipt of a fault report, Enghouse shall provide:

- Assistance in analyzing, diagnosing, and setting priorities for dealing with problems
- Assistance with and/or implementation of corrective measures
- A resolution and/or root cause analysis (RCA) report for any critical outages
- Consultation and recommendations for daily operations and maintenance, system configuration, or changes

## **Enghouse Support Centre Contacts and Hours of Operation**

Enghouse Support provides, via telephone and/or email, a convenient way to consult trained professionals and CSRs on specific support problems, solve defects, and provide efficient knowhow and experience to the Customer. Reported problems will be prioritized and addressed as defined within the Response Time section of this document.

**Enghouse Support Location** Toronto, Ontario, Canada

**Contact Telephone Number** 1-905-946-3200

1-866-772-8425

**Email** techsupport@enghouse.com

**Hours** (9:00AM – 5:00PM Eastern Standard Time)

### **Note**

While detailed information may be provided by email, any critical issues that require immediate attention should be addressed to the telephone numbers above. Enghouse cannot guarantee a response within the stated response time if a request is made solely via email. Email response may take up to 24 hours.

## **Support Requests**

### **Logging Support Requests**

Any call or email message requesting support received into the Enghouse Support Centre will be logged, monitored, and tracked until it is resolved. The following process will generally be followed:

1. The CSR requests the following information from the Customer:

- Caller's name, location, and company
  - Call-back telephone number
  - Product or solution name
  - Software release information
  - Nature of the problem
  - Description and/or history of the problem and the customer's efforts to resolve it
  - System access, database access, and diagnostic information
2. The CSR determines the severity level based on Severity Levels defined in this document.
  3. A trouble ticket (TT) is logged against the call and a TT number is issued to the Customer.
  4. The solution and/or workaround to the problem is determined and implemented.
  5. For any critical Level 1 issue, a resolution or RCA report is provided to the Customer; details are added to the Enghouse call tracking system and the problem report is closed.

**Note**

The Customer must supply the CSR with all necessary information and remote system access to diagnose and/or fix the problem in an efficient manner. Response and resolution time objectives cannot be guaranteed if the required system access and information is not accurately provided to the CSR.

**Severity Levels**

Enghouse has adopted the TL9000 Telecommunications Industry Standards. Support requests are assigned priorities based on an evaluation of the initial impact of the problem, based on the TL9000 definitions of severity, as follows:

Severity Level	Definition
Critical Level 1	<p>The system is rendered inoperable and has a critical impact on the Customer's operation. Critical level 1 problems generally apply to production environments.</p> <p>Critical problems severely affect service, capacity/traffic, billing, and maintenance capabilities and require immediate corrective action.</p>
Major Level 2	<p>The system is generally usable, but an essential component of the system is malfunctioning and substantially impacts the Customer's operation. Major level 2 problems apply to production environments.</p> <p>Major problems cause conditions that seriously affect system operation, maintenance, and administration and require immediate attention as viewed by a Customer upon discussion with the CSR. The urgency is less than in the critical situations because of a lesser immediate or impending effect on system performance, customers, and the Customer's operation and revenue.</p>
Minor Level 3	<p>The system is generally usable but is not functioning in accordance with specifications and the current user documentation for the applicable release of the software. The error condition has no substantial impact on the Customer's operations.</p>
	<p>Other problems the Customer does not view as critical or major are considered minor. Minor problems do not significantly impair the functioning of the system and do not significantly affect service to the customers. These problems are tolerable in system use.</p>

**Response Time**

<b>Service Language</b>	English		
<b>Severity Level</b>	Critical (L1)	Major (L2)	Minor (L3)
<b>Response Time (business hours)</b>	Within 60 min	Within 120 min	3 business days
<b>Target Resolution Time</b>	Within 1 day	Within 3 business days	Next software update release under development
<b>Final Issue Resolution Time</b>	Within 3 days	Within 5 business days	Next software update release under development

### **Remote Access Diagnosis**

Enghouse's ability to provide Support is affected significantly by the Customer's ability to provide Enghouse with comprehensive access to the System deployed in the Customer's environment. During the remote access diagnosis process, Enghouse Support representatives will connect to the system via an available IP connection, perform remote diagnosis, and attempt to resolve any reported issues.

The Customer shall provide Enghouse with full, unrestricted access to the System deployed at the Customer's locations so that Enghouse can perform Support. The Customer shall maintain a functional remote access port using CISCO VPN SSH or Telnet so that Enghouse can perform remote support as needed. If the Customer does not provide Enghouse with timely and complete access to the System, Enghouse shall be relieved of its obligations to meet the established response times stated in this document.

### **Software Updates and Upgrades**

Enghouse will make available Updates and Upgrades of the Software on an ongoing basis. Enghouse notifies all Customers of all generally available Software Releases. Each Software Update or Upgrade will be accompanied by release notes. Documentation updates, if applicable, are provided as part of Software Upgrades.

### **Release Notes**

Any Update provided will be accompanied by documentation describing the content in a Software Release. Enghouse release notes generally contain, but are not limited to, the following information:

- Release note identifier (name, date, version #)
- What is new in the release
- System requirements (third party platforms/modules/etc. with version numbers and dates)
- Features and changes (new features, defects corrected, and caveats)
- Installation guide (how to obtain and install the release)

### **Software Updates**

Customers that are current on their Maintenance/Support plan will receive patches, fixes, and minor enhancements within each Software Update. Updates do not include Custom Application Programs. The Customer may install and test any software update in a test environment prior to deployment in the production environment. Release notes are provided for each software update.

Any modifications to the Customer's operating environment and network in connection with installing an Update shall be agreed to in writing by both parties (e.g., methods and operations procedures, approval or rejection, risks, time schedules, responsibility matrix, etc.) prior to making changes.

### **Software Upgrades**

Software Upgrades include additional new features, new functions, and/or major enhancements intended to significantly improve performance of the existing software version that is owned by the Customer. Upgrades do not include Custom Application Programs. These Upgrades include generally available versions, fixes, and patches. Software Upgrades, installation, data, and application migration services are available for purchase. Please contact your Enghouse Account Manager for further details.

## **Enhancement Requests**

Product Enhancement Requests (ER), including new functionality or suggestions for improvements, can be logged with the CSR via email. Please add "Enhancement Request" to the subject line in the email. All such requests are logged and forwarded to the respective Product Manager. Any requests for support that may be resolved and converted to an ER are also forwarded to the respective Product Manager.

## **Advanced Replacement**

### **Note**

This section is applicable only if hardware has been purchased from Enghouse and within the specified hardware manufacturer's warranty.

Under Advanced Replacement, Enghouse will process replacement part(s) within 24 hours following a confirmed service request from the Customer, provided the Customer agrees to return the original faulty part(s) to the Enghouse Support Center within 30 calendar days of the date from which Enghouse ships replacement hardware under its Advanced Replacement Service.

If Enghouse receives the request during normal business hours, Enghouse shall make commercially reasonable efforts to ship replacement part(s) the next business day. The Customer bears the cost of delivering the faulty part back to the Enghouse Support Centre. Enghouse bears the cost of delivering the replacement part to the designated Customer location.

## **Enhanced Services**

The following value-added services are available from Enghouse at an additional fee and subject to availability of resources. The scope of such services shall be defined in a Statement of Work and mutually agreed to between the Customer and Enghouse. A minimum of 14 days advanced notice is required to schedule enhanced services.

### **Custom Application Program Support**

Enghouse can provide support for any Custom Applications Programs developed under a separate Statement of Work, at additional cost. Support services for custom applications are priced on a case by case basis.

### **On-Site Support**

Customized on-site support services are available at an additional cost in connection with Updates or Upgrades, routine checks, general system health and maintenance, installation and testing, or relocation or upgrade of the hardware. On-site support is available during business hours, Monday to Friday. Upon receipt of the Customer's written work authorization and based on the established Statement of Work between the Customer and Enghouse, Enghouse will initiate its on-site support service.

**EXHIBIT "B"**  
**COMPENSATION**



**Enghouse  
Networks**

**Purchase/Services Order Form**

Enghouse Networks (US) Inc.  
80 Tiverton Court, Suite 800  
Markham, Ontario, Canada, L3R 0G4  
Phone: (905) 946-3200  
Fax: (905) 946-3201

Dated: 12-Nov-2018  
Agreement No. 11122018C

CONTACT: Walter J. Minor Jr. Tel: +1-(317) 262-4690 Email: walter.minor@enghouse.com

ENGHOUSE USE ONLY					
Account Executive: <b>Walter J. Minor Jr</b>		Reference Agreement No.:			
Purchase Order No.:					
BILL TO:			SHIP TO:		
Customer Name: <b>The City of Riverside Public Utility District</b>			Customer Name: <b>Same As Ship To:</b>		
Address: <b>3750 University Ave., 3rd Floor</b>			Address:		
City: <b>Riverside</b>			City:		
State: <b>CA</b>		Zip Code: <b>92501</b>		State: Zip Code:	
Contact: <b>Rajiv Butala</b>			Contact:		
Phone:		Fax:		Phone: Fax:	
No.	Description	Unit Price	Qty	Extended	
	<b>Data Migration</b>				
<b>PROFESSIONAL SERVICES :</b>					
	Professional Services: Data Migration from City of Riverside existing Datasets.				
1	Note: • The level of effort is estimated and is subject to change based on actual effort • Subject to agreement on a Statement of Work to be developed	\$1,500.00	75	\$112,500	
<b>SUB TOTAL PROFESSIONAL SERVICES</b>				<b>\$112,500</b>	
<b>TRAVEL: to be billed at actual incurred</b>					
<b>PRICING NOTES:</b> Payment: Net 30 Invoiced monthly in arrears on a time and materials basis with a 50% deposit upon receipt of PO.  Enghouse proposal is subject to Standard Enghouse Master Purchase Agreement Discount levels are subject to change and many not be valid based on changed quantities. Please see additional Enghouse Standard Terms and Conditions					
<b>Taxes</b> Applicable local taxes to be added separately upon invoicing					
<b>TOTAL</b>				<b>\$112,500</b>	

All prices and payments referenced in this Agreement are in US Dollars.  
This Product/Services Order Form is subject to the terms and conditions contained in the applicable Master Purchase Agreement on file and shall become a part of such agreement(s) upon both party's execution below.

For ENGHOUSE		For City of Riverside Public Utility District	
Signature: <i>Walter J. Minor Jr</i>	Date:	Signature:	Date:
Name: <b>Walter J. Minor Jr.</b>		Name:	
Title: <b>Senior Account Director</b>	Email: <a href="mailto:Walter.Minor@enghouse.com">Walter.Minor@enghouse.com</a>	Title:	Email:
Phone: <b>253-670-2093</b>	Fax:	Phone:	Fax:





**Enghouse  
Networks**

**Purchase/Services Order Form**

Enghouse Networks (US) Inc.  
80 Tiverton Court, Suite 800  
Markham, Ontario, Canada, L3R 0G4  
Phone: (905) 946-3200  
Fax: (905) 946-3201

Dated: 19-Nov-2018  
Agreement No. 11192018B

CONTACT: Walter J. Minor Jr. Tel: +1-(317) 292-4690 Email: walter.minor@enghouse.com

ENGHOUSE USE ONLY				
Account Executive: <b>Walter J. Minor Jr.</b>		Reference Agreement No.:		
Purchase Order No.:				
BILL TO:		SHIP TO:		
Customer Name: <b>The City of Riverside Public Utility District</b>		Customer Name: <b>Same As Bill To:</b>		
Address: <b>3750 University Ave., 3rd Floor</b>		Address:		
City: <b>Riverside</b>		City:		
State: <b>CA</b> Zip Code: <b>92501</b>		State: Zip Code:		
Contact: <b>Rajiv Butala</b>		Contact:		
Phone: Fax:		Phone: Fax:		
No.	Description	Unit Price	Qty	Extended
<b>PRODUCTION SYSTEM: NetDesigner</b>				
<b>Software:</b>				
1	NetDesigner Editor CU (Concurrent Use) Rights to Use License (Licensed per Concurrent User) Requires ESRI ArcEditor CU License - NOT INCLUDED Add NetDesigner Server RTU License	\$9,800	1	\$9,800
2	Fiber Management Module	\$5,250	1	\$5,250
3	Copper Management Module	\$5,250	1	\$5,250
4	Structures Management Module	\$5,250	1	\$5,250
5	Inside Plant Module	\$7,000	1	\$7,000
6	NetDesigner Enterprise Server STANDARD Rights to Use License Includes: 4 Cores License Requires ESRI ArcGIS Enterprise Standard Server License - NOT INCLUDED Requires Oracle or SQL Server RDBMS License - NOT INCLUDED	\$10,500	1	\$10,500
<b>SUB TOTAL SOFTWARE</b>				<b>\$43,050</b>
<b>PROFESSIONAL SERVICES</b>				
7	NetDesigner Installation and Deployment (DAYS)	\$1,500.00	2	\$3,000
<b>SUB TOTAL PROFESSIONAL SERVICES</b>				<b>\$3,000</b>
<b>SUPPORT</b>				
Annual Support - 1 Year				
8	NetDesigner Editor CU (Concurrent Use) Rights to Use License	\$2,800.00	1	\$2,800
9	Fiber Management Module	\$1,500.00	1	\$1,500
10	Copper Management Module	\$1,500.00	1	\$1,500
11	Structures Management Module	\$1,500.00	1	\$1,500
12	Inside Plant Module	\$1,500.00	1	\$1,500
13	NetDesigner Enterprise Server STANDARD Rights to Use License Includes: 4 Cores License Requires ESRI ArcGIS Enterprise Standard Server License - NOT INCLUDED Requires Oracle or SQL Server RDBMS License - NOT INCLUDED	\$3,000.00	1	\$3,000
<b>SUB TOTAL SUPPORT</b>				<b>\$11,800</b>
<b>TRAVEL: to be billed at actual incurred</b>				
<b>PRICING NOTES</b>				
Pricing Notes: Payment: Net 30 Software: • With PO 50% • Upon Delivery 50% Professional Services: • Installation of Software 50% • Training 50% Annual Support: 100% on Shipment				
Enghouse proposal is subject to Standard Enghouse Master Purchase Agreement Discount levels are subject to change and many not be valid based on changed quantities. First year of support is mandatory. Support includes OEM ESRI Software if licensed from Enghouse. ESRI licenses are bundled OEM Licenses. Other services, modules and extensions for ESRI ArcGIS from ESRI may not be available to OEM licensed users. Please check with ESRI directly. Please see additional Enghouse Standard Terms and Conditions Travel for onsite training or installation is not included and will be billed on actual costs ESRI Software is not included in this quotation Data Migration is not included in this quotation				
<b>Taxes</b> Applicable local taxes to be added separately upon invoicing				
<b>TOTAL</b>				<b>\$57,850</b>

All prices and payments referenced in this Agreement are in US Dollars.  
This Product/Services Order Form is subject to the terms and conditions contained in the applicable Master Purchase Agreement on file and shall become a part of such agreement(s) upon both party's execution below.

For ENGHOUSE		For City of Riverside Public Utility District	
Signature: <i>Walter J. Minor Jr.</i>	Date:	Signature:	Date:
Name: <b>Walter J. Minor Jr.</b>		Name:	
Title: <b>Senior Account Director</b>	Email: <b>Walter.Minor@enghouse.com</b>	Title:	Email:
Phone: <b>253-670-2093</b>	Fax:	Phone:	Fax:



**Enghouse  
Networks**

**Purchase/Services Order Form**

Enghouse Networks (US) Inc.  
80 Tiverton Court, Suite 800  
Markham, Ontario, Canada, L3R 0G4  
Phone: (905) 946-3200  
Fax: (905) 946-3201

Dated: 19-Nov-2018  
Agreement No. 11192018A

CONTACT: Walter J. Minor Jr. Tel: +1-(317) 262-4690 Email: walter.minor@enghouse.com

ENGHOUSE USE ONLY				
Account Executive: <b>Walter J. Minor Jr.</b>		Reference Agreement No.:		
Purchase Order No.:				
BILL TO:		SHIP TO:		
Customer Name: <b>The City of Riverside Public Utility District</b>		Customer Name: <b>Same As Bill To:</b>		
Address: <b>3750 University Ave., 3rd Floor</b>		Address:		
City: <b>Riverside</b>		City:		
State: <b>CA</b> Zip Code: <b>92501</b>		State: Zip Code:		
Contact: <b>Rajiv Butala</b>		Contact:		
Phone:	Fax:	Phone:	Fax:	
No.	Description	Unit Price	Qty	Extended
<b>PRODUCTION SYSTEM: NetDesigner</b>				
<b>Software:</b>				
1	NetDesigner Editor CU (Concurrent Use) Rights to Use License (Licensed per Concurrent User) Requires ESRI ArcEditor CU License- NOT INCLUDED Add NetDesigner Server RTU License	\$14,000	4	\$56,000
2	Fiber Management Module	\$7,500	1	\$7,500
3	Copper Management Module	\$7,500	1	\$7,500
4	Structures Management Module	\$7,500	1	\$7,500
5	Inside Plant Module	\$10,000	1	\$10,000
6	NetDesigner Viewer CU License (Licensed per Concurrent User) Requires ESRI ArcVIEW CU OEM License - NOT INCLUDED NetDesigner Enterprise Server STANDARD Rights to Use License Includes: 4 Cores License	\$3,500	6	\$21,000
7	NetDesigner Enterprise Server STANDARD Rights to Use License Includes: 4 Cores License Requires ESRI ArcGIS Enterprise Standard Server License - NOT INCLUDED Requires Oracle or SQL Server RDBMS License - NOT INCLUDED	\$15,000	1	\$15,000
<b>SUB TOTAL SOFTWARE</b>				<b>\$124,500</b>
<b>PROFESSIONAL SERVICES</b>				
8	NetDesigner Installation and Deployment (DAYS)	\$1,500.00	5	\$7,500
9	Training - User and Admin (DAYS) Classroom size 8 max	\$1,500.00	5	\$7,500
<b>SUB TOTAL PROFESSIONAL SERVICES</b>				<b>\$15,000</b>
<b>SUPPORT</b>				
<b>Annual Support - 1 Year</b>				
10	NetDesigner Editor CU (Concurrent Use) Rights to Use License	\$11,200.00	1	\$11,200
11	Fiber Management Module	\$1,500.00	1	\$1,500
12	Copper Management Module	\$1,500.00	1	\$1,500
13	Structures Management Module	\$1,500.00	1	\$1,500
14	Inside Plant Module	\$2,000.00	1	\$2,000
15	NetDesigner Viewer CU License (Licensed per Concurrent User) Requires ESRI ArcVIEW CU OEM License - NOT INCLUDED	\$4,200.00	1	\$4,200
16	NetDesigner Enterprise Server STANDARD Rights to Use License Includes: 4 Cores License Requires ESRI ArcGIS Enterprise Standard Server License - NOT INCLUDED Requires Oracle or SQL Server RDBMS License - NOT INCLUDED	\$3,000.00	1	\$3,000
<b>SUB TOTAL SUPPORT</b>				<b>\$24,900</b>
<b>TRAVEL: to be billed at actual incurred</b>				
<b>PRICING NOTES</b>				
Pricing Notes: Payment: Net 30 Software: • With PO 50% • Upon Delivery 50% Professional Services: • Installation of Software 50% • Training 50% Annual Support: 100% on Shipment				
Enghouse proposal is subject to Standard Enghouse Master Purchase Agreement Discount levels are subject to change and many not be valid based on changed quantities. First year of support is mandatory. Support includes OEM ESRI Software if licensed from Enghouse. ESRI licenses are bundled OEM Licenses. Other services, modules and extensions for ESRI ArcGIS from ESRI may not be available to OEM licensed users. Please check with ESRI directly. Please see additional Enghouse Standard Terms and Conditions Travel for onsite training or installation is not included and will be billed on actual costs ESRI Software is not included in this quotation Data Migration is not included in this quotation				
<b>Taxes</b> Applicable local taxes to be added separately upon invoicing				
<b>TOTAL</b>				<b>\$164,400</b>

All prices and payments referenced in this Agreement are in US Dollars.  
This Product/Services Order Form is subject to the terms and conditions contained in the applicable Master Purchase Agreement on file and shall become a part of such agreement(s) upon both party's execution below.

For ENGHOUSE		For City of Riverside Public Utility District	
Signature: <i>Walter J. Minor Jr.</i>	Date:	Signature:	Date:
Name: <b>Walter J. Minor Jr.</b>		Name:	
Title: <b>Senior Account Director</b>	Email:	Title:	Email:
Phone: <b>253-670-2093</b>	Fax:	Phone:	Fax:

**EXHIBIT "C"**

**KEY PERSONNEL**

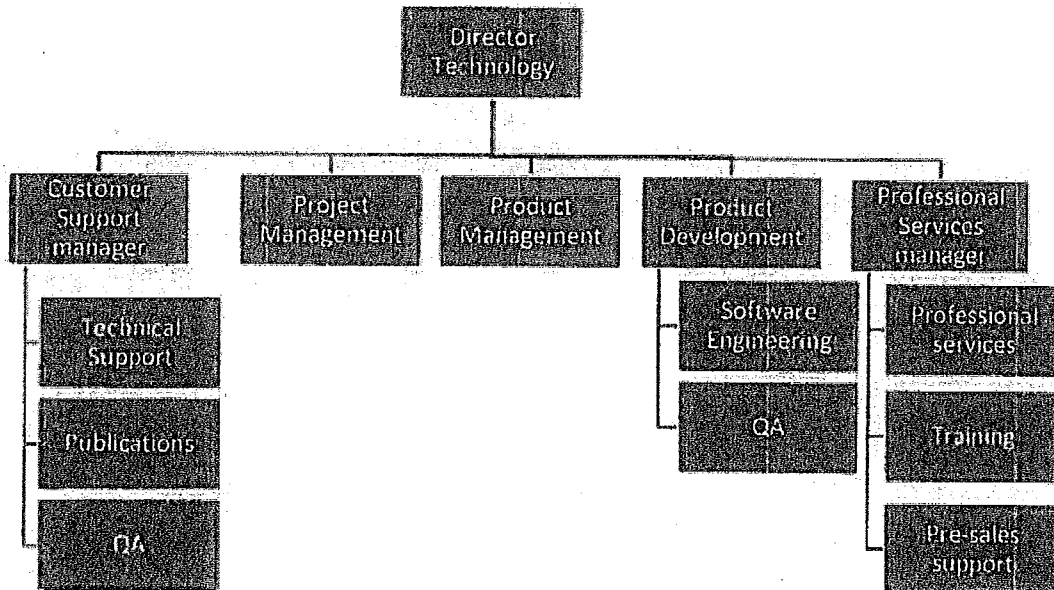
This integration project and the methodology used therein could potentially have similarities with the implementation of NetDesigner within the City of Riverside as it relates to integration with other enterprise systems in the municipal environment.

### 3.2 Key Project Personnel

#### 3.2.1 Organization Structure and Project Team

Enghouse Networks has a team of over 200 R&D and support personnel, with dedicated teams for Support, R&D, development, UI Design, Product & Project Management, and Professional Services. We have the experience, breadth and depth of engineering capacity in our organization to meet the needs of Riverside Public Utility District project effectively, and in a timely fashion.

Sergio Palladini M.GIS, Professional Services Team Leader, Axel Hotzwik, Product Manager, and Walter Minor, Account Executive can be contacted for any questions regarding the proposal.



Proposer shall provide resumes for key personnel and any sub-consultants outlining relevant experience. (See Appendix E for further details.)

**Name:** Axel Hotzwik

**Role:** Product Manager

**Background Summary:**

Axel brings over 20 years of experience in the GIS and Telecom Vertical industries. He product manages the *NetDesigner Enterprise ArcGIS* based platform to utilities, telecoms, cable MSO, cities, design service companies in Canada, US, Europe, Australia and Asia. Our customers

leverage geospatial information to streamline engineering, provisioning, operations and to fulfill operational efficiency, and regulatory objectives. As product manager, Axel responsibilities for managing the following applications: **NetDesigner**: An ESRI based Fiber, Copper, Coax outside and inside plant facilities design and management application that is currently our flagship product with clients around the world. One major release per year since 2001 with one to two minor releases per year.

**Name:** Sergio Palladini

**Role:** Professional Services Team Lead

**Background Summary:**

As Professional Services team lead for the Enghouse Networks Resource Management Group, Sergio's primary role is focused on the planning, execution, and delivery of all GIS-related telecommunication projects.

Sergio brings thirteen years of experience working with Enghouse Networks and an academic resume, which includes a master's degree in GIS. Sergio has managed project tasks ranging from installation and deployment of the NetDesigner system solution to custom application development and integration projects, all of which fall within his group. It is this combination of Sergio's theory and practice that brings strength to the Enghouse Networks operational team.

**Name:** Walter J. Minor Jr.

**Role:** Senior Account Director – North America

**Background Summary:**

A dynamic, result's driven sales and marketing professional with an extensive background of over 35+ years in the Information Technology and Telecommunications industry. He started his career at IBM and has since held a number of sales and management positions with different organizations. One area of his business expertise is Strategic Account Sales and Management of technology solutions to SMB, SME, Enterprise and Vertical Markets (Utilities, Financial, Healthcare, Insurance, Legal, and Government). He is a highly motivated, creative critical thinker with a customer service-oriented focused on delivering excellent service.

Employing a consultative sales and trusted partnership approach, Walter has worked successfully with customers to deploy NetDesigner, OSS/BSS, and other Network Infrastructure solutions. In addition, during his career he has developed skills and expertise in the following areas Cloud/Hosted Communication Services, Cloud Computing, Omni-channel Contact Center, Workforce Optimization, Business Process Automation, Unified Communications & Collaboration, Project Management, Managed Services, and Professional Services.