

AGREEMENT NO.

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES AND  
TIDALIS AMERICAS LTD

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and TIDALIS AMERICAS LTD., a Canadian Corporation, 3500 Gilmore Way, Unit 300, Burnaby, British Columbia, V5G 0B8, Canada ("Consultant").

WHEREAS, City requires software licenses and maintenance and applications programming support services to enhance the Information Technology Division's capabilities to support the Harbor Department's Klein Billing ("Billing") and PortControl Systems; and

WHEREAS, City requires the professional, expert and technical services of Consultant on an as-needed basis to assist the City in providing applications programming support services for the Department's proprietary Billing and PortControl Systems; and

WHEREAS, Consultant possesses extensive experience in providing applications programming support services and is currently the exclusive provider of support for the Department's proprietary Billing and PortControl Systems software; and

WHEREAS, Consultant, by virtue of training and experience and proprietary knowledge, is uniquely well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise or proprietary knowledge and tools necessary to support the Department's current Billing and PortControl Systems software, nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and

regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

## 2. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 11 (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it or any of its subconsultants requires access to the Project area or any other premises of City's Harbor Department. Access rights, if any, shall be granted in writing to Consultant at the sole reasonable discretion of Executive Director, consistent with the Scope of Work, specifying conditions, if any, Consultant must satisfy in connection with such access. The foregoing procedure shall constitute the sole mechanism through which Consultant may obtain access to the Project area or any other premises of City's Harbor Department in connection with the Project. Consultant acknowledges that the Project area may be occupied or used by tenants or contractors of City and that access rights granted by City's Harbor Department to Consultant shall be consistent with any such occupancy or use.

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 373, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board and Los Angeles City Council.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Five (5) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum payable under this Agreement shall be Three Million, Nine Hundred Ninety-Six Thousand, One Hundred Twenty-Eight Dollars (\$3,996,128.00).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

“I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City’s Living Wage Ordinance.

\_\_\_\_\_  
”  
(Consultant’s Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without

a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191

## 6. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article 6 shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

## 7. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

8. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See <https://finance.lacity.org/how-register-btrc>.

9. INDEMNIFICATION

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

10. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Where Consultant provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided

as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

Where Consultant's operations involve work within 50 feet of railroad track, Consultant's Commercial General Liability coverage shall have the railroad exclusion deleted.

(2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(3) Workers' Compensation and Employer's Liability

Where applicable, Consultant shall comply with the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

(4) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of Five Million Dollars (\$5,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following the completed term of this Agreement.

(a) Technology Errors and Omissions Liability Insurance

Consultant is required to provide Technology Errors and Omissions Liability Insurance with respect to negligent or wrongful acts, errors or omissions, in rendering or failing to render computer or information technology services or technology products in connection with the professional services to be provided under this Agreement. This insurance policy shall include coverage for Privacy and Network Security and protect against claims arising from all products and services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability. The limits disclosed herein shall neither increase nor decrease Consultant's liability as defined elsewhere in this Agreement.

Consultant certifies that it now has Technology Errors and Omissions Liability Insurance in the amount of Five Million Dollars (\$5,000,000) per claim/aggregate including Notification Costs, which shall cover the work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium and a 30-days notice of cancellation for any other reasons may be submitted.

Notice of occurrences of claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's office.

B. Insurance Procured by Consultant on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, and where Consultant is required to name the City of

Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause City to be named as an additional insured on all policies it procures in connection with this Article 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. \_\_\_\_, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days' notice of cancellation for nonpayment of premium, and a 30-days' notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article 10 shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> and submit the appropriate proof of insurance on Consultant's behalf.

Upon request by City, Consultant shall furnish a copy of the binder of insurance and/or a full certified policy for any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

D. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
2. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
5. Consultant provides the name and address of its claims administrator.
6. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

E. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

11. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

12. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article 1. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

13. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated

and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

14. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy to the fullest extent allowed by applicable law, and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit E.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Regional Alliance Marketplace for Procurement (RAMP), at <http://www.RAMPLA.org>. Consultant shall comply with all RAMP reporting requirements set forth in Executive Directive No. 35 (August 25, 2022), *Equitable Access to Contracting Opportunities*, during the term of this Agreement.

15. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

16. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

17. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

18. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Consultant in the performance of this Agreement.

19. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not

obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

## 20. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

## 21. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Information Technology, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

23. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

24. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

25. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit F.

26. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

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

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <https://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

27. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

28. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

29. CONFLICTING TERMS

In the event of any conflict or inconsistency between the terms of this Agreement, and any exhibits and attachments incorporated herein by reference, the terms of this Agreement shall govern.

30. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

31. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

32. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

33. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

34. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

35. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

36. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

////

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By signing below, I attest that I have no personal, financial, beneficial, or familial interest in this Agreement.

Dated: \_\_\_\_\_, 2025

By: \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
AMBER M. KLESGES  
Board Secretary

Dated: September 10, 2025

TIDALIS AMERICAS LTD.  
Pavel  
By: \_\_\_\_\_  
Skournik

Digitally signed by Pavel Skournik  
Date: 2025.09.10  
12:41:43 -07'00'

Pavel Skournik, Managing Director

(Print/type name and title)  
Judyth  
By: \_\_\_\_\_  
Almasi

Digitally signed by Judyth Almasi  
Date: 2025.09.15  
10:10:41 -07'00'

J Almasi, Sales Director  
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

9.18, 2025  
HYDEE FELDSTEIN SOTO, City Attorney  
STEVEN Y. OTERA, General Counsel

By: \_\_\_\_\_  
MINAH PARK, Deputy

Attachments

**Date:** August 4, 2025

**Contractor/Vendor Name:** Tidalis Americas Ltd

Account#	542000 & 542025		Project#	65000024
Division#	50010		Task#	
Budget FY	542000	542025	Amount	
2025/2026	\$0	\$15,000	\$15,000	
2026/2027	\$326,799	\$33,000	\$359,799	
2027/2028	\$336,602	\$36,300	\$372,902	
2028/2029	\$346,701	\$39,930	\$386,631	
2029/2030	\$357,101	\$43,923	\$401,024	
2030/2031	\$367,814	\$24,158	\$391,972	
TOTAL:	\$1,735,017	\$192,311	\$1,927,328	

For Acct/Budget Div. Use Only

Verified By:  Melody Ugalde  
2025.09.17 08:20:44 -07'00'

Verified Funds Available:  Digitally signed by Frank Liu  
Date: 2025.09.17 12:37:30 -07'00'

Date Approved: 9/17/25

Account#	542025	Project#	65000121
Division#	50010	Task#	
Budget FY:	Amount:		
2025-26	\$221,280		
2026-27	\$418,560		
2027-28	\$423,360		
2028-29	\$407,360		
2029-30	\$396,160		
2030-31	\$202,080		
TOTAL:	\$2,068,800		

For Acct/Budget Div. Use Only

Verified By:  Melody Ugalde  
2025.09.17 08:20:52 -07'00'

Verified Funds Available:  Digitally signed by Frank Liu  
Date: 2025.09.17 12:37:25 -07'00'

Date Approved: 9/17/25

# Exhibit A

## SCOPE OF WORK

### 1. OVERVIEW

Tidalis Americas Ltd. (Tidalis) shall provide software licensing, maintenance, support, technical services, and system enhancements related to the City of Los Angeles Harbor Department's (LAHD) Klein Billing and PortControl Systems. These services are essential for supporting the Port's operations, revenue collection, compliance, and maritime coordination.

### 2. SCOPE OF SERVICE

#### 2.1 SOFTWARE LICENSING

The following software products are licensed to LAHD:

##### 1. PortControl's Pilot Software

Enables safe and efficient provision of pilotage services, including dispatch management according to rules and certifications; as well as managing notifications to pilots, tracking licenses, and gathering data for pilotage invoicing.

##### 2. PortControl's Billing Software including Property Management and Common Operation Picture (COP)

Manage all operations, billing, pilotage, property leasing, resources, and much more, facilitating optimized efficiency through information sharing and collaborative decision making. PortControl's Common Operating Picture (COP) is a GIS-based complete operating visual view to enable real-time situational awareness of what is happening in the Port. AIS positioning data enables the graphical representation of a vessel on a map, along with Port assets such as berths, bollards, and pier marks marked to scale.

##### 3. PortControl's Pilot Mobile Dispatch App (PMDA) Mobile Services

Mobile app is used by the Port's Pilots and Shore Power teams. The app is configured specifically for the Port, enabling efficient access to alerts, information on jobs and tasks out to staff, as well as data recording and gathering anywhere staff work, provides real-time information exchange, efficient changes in tasks or timing, as well as immediate data updates to everyone to carry on their own tasks, for example billing.

LAHD retains ownership of any enhancements made to the above-listed licensed products.

Tidalis shall provide Tidalis software licenses for new modules or expanded scope related to LAHD Klein Billing and PortControl Systems in accordance with the Software License Agreement dated January 6, 2012, between LAHD and Tidalis, and any amendments thereto.

## **2.2 SOFTWARE MAINTENANCE AND SUPPORT**

Tidalis shall provide software maintenance and technical support services to ensure the continuity, performance, and reliability of the software used by LAHD. These services include:

- Compliance with the Information Technology (IT) policies, security protocols, and access control measures set by LAHD.
- Help desk and ticket-based technical support for both end users and IT administrators;
- Regularly provision patches, security updates, and bug fixes;
- Troubleshoot and provide resolution to reported software or integration issues;
- Resolution to functional defects or performance degradation;
- Assist with software configuration, deployment, testing, and documentation;
- Adhere to the Port's IT change management procedures; and
- Provide support aligned with the Port's regular operating hours, available 24/7.

## **2.3 AS-NEEDED CONSULTING SERVICES**

Tidalis shall provide consulting and development services on an as-needed basis to implement system changes that support LAHD's evolving business processes and requirements. These services may include, but are not limited to:

- Changes to tariff and rate structures;
- Provide as-needed services to enhance the functionality of existing modules to accommodate new operational requirements;
- Development of new billing and invoicing programs;
- Enhancements to regulatory and audit reporting;
- Interfaces with new or modified enterprise systems;
- Adjustments to accommodate changes in agreements with tenants, customers, or stakeholders;
- System enhancements, development of new functionalities, and technical upgrades;
- Code modifications, improvements to user interfaces, and performance tuning;
- Database design and modifications, including schema updates, stored procedures, and indexing;
- Preventive maintenance and assistance with backup restoration; and
- Development of custom reports and data extraction solutions.

All as-needed services will include knowledge transfer, user training, user documentation, and workflow diagrams.

### **2.3.1 PROJECT SCOPE**

The proposed project seeks to implement a series of enhancements and supplementary modules for the Klein Billing and PortControl Systems. This initiative will encompass a comprehensive range of tariff changes, including wharfage, dockage, and pilotage fees. Furthermore, it will address charges stipulated in contractual agreements with LAHD customers, ensuring adherence to established obligations.

In addition to these improvements, the project will establish integration between relevant external systems to facilitate seamless data exchange and enhance operational efficiency. A primary objective is to refine the user experience of the Port Pilots mobile application, ensuring the app is both intuitive and user-friendly. Enhancements will also include features designed to provide users with timely notifications concerning critical maritime information as well as updates on Port conditions and operational developments.

LAHD intends to engage in thorough consultations with stakeholders and Tidalis to assess, gather and develop business requirements, culminating in a detailed finalization of the project scope. This collaborative approach aims to ensure that the proposed enhancements effectively address user needs and contribute to the optimization of Port operations. A comprehensive stakeholder consultation process will precede the finalization of the project scope, thereby allowing for essential input and feedback from all pertinent parties.

#### **2.3.1.1 PORT PILOT ENHANCEMENTS**

The Port Pilot Division has requested improvements to streamline resource management, work scheduling, communication, and insights into critical maritime information. This will help ensure the safe navigation of ships into and out of the harbors and waterways. Specific requests include:

- Integration of external tide information to aid in determining safe vessel drafts;
- Provide notifications when vessels exceed 370 meters in length, which require two (2) pilots;
- Allow external users to submit web orders for piloting services ahead of vessel arrival; and
- Add vessel draft information to the Port Pilots mobile app.

#### **2.3.1.2 KLEIN BILLING ENHANCEMENTS**

Stakeholders from LAHD have requested optimization to the Port billing system, which governs the charging for the use of Port facilities and services, including berthing, cargo handling, and pilotage. The following

enhancements have been requested by the Wharfingers, Finance, and Accounting Divisions to improve data accuracy and enhance cost tracking and transparency:

- Update the system to process tariff changes such as wharfage, dockage, and pilotage, as well as charges specified in agreements with LAHD customers;
- Compute retroactive rent rolls in the Property Module;
- Synchronize data between the Port Pilots and Wharfinger divisions;
- Enhance the Message and Reporting Service (MARS) notifications with details for identifying the Electronic Data Interchange (EDI) import process; and
- Improve the tug/barge tracking process for the accurate billing of barges, including the Space Assignment Credit and Rebilling process.

### **2.3.1.3 ALTERNATIVE MARITIME POWER (AMP) ENHANCEMENTS**

LAHD's Construction and Maintenance (C&M) personnel have requested improvements to increase visibility of container vessels coming into the Port for electricity from the shore grid, which is important for air quality compliance and reducing emissions. Specific requests include:

- Allow Port Mechanics to create jobs at least 24 hours in advance;
- Enable Port Mechanics to enter or modify data after ships arrive or before they depart the Port; and
- Update the Port Pilots website to be mobile-friendly.

### **2.3.1.4 SYSTEMS INTERFACE ENHANCEMENTS**

LAHD's stakeholders have requested the addition of new data exchanges and/or interface upgrades to respond to changes within external systems to automate current manual processes as well as improve data accuracy and quality. Integration enhancements include:

- Integrate with new accounting software for GASB 87 leases;
- Integrate geoPOLA with PortControl Systems;
- Integrate POLA Fusion ERP with PortControl Systems; and
- Integrate new Property Management software for the Real Estate Division with PortControl Systems.

### **2.3.1.5 SYSTEMS PERFORMANCE UPGRADES**

The Klein Billing and PortControl Systems require enhancements to their performance and speed, as well as improvements in security, reliability, and reduced downtime. This may involve hardware and software upgrades.

### 2.3.1.6 OPERATIONAL REPORTS AND WORKFLOWS

Enhanced operational reports and workflows are needed to improve knowledge retention, facilitate faster onboarding of new employees, and increase team efficiency. This will lead to a better understanding of processes, procedures, and best practices, ultimately improving productivity and reducing errors. Specific needs include:

- Create workflow documentation and user guides/manuals for each division to streamline processes;
- Develop a data dictionary and reports that capture all transactions for a specific customer over a defined time period;
- Automate the Rail TEU (Twenty-foot Equivalent Unit) Report for rail freight transportation to support annual compensation reconciliation. This will replace the manual data capture and aggregation method, enhancing efficiency and accuracy in compensation calculations; and
- Create a Visit Report that includes ship information and movement details, such as arrival and departure information, in compliance with the California Public Records Act (CPRA).

### 2.3.2 TASK ORDER PROCESS

All As-Needed work will be authorized in accordance with the following procedure:

1. **REQUEST INITIATION** - LAHD will submit an enhancement request that includes the scope of work, desired deliverables, project timeline, and any technical constraints.
2. **QUOTATION** - Tidalis will provide a written cost estimate within three (3) business days of receiving the request, unless another deadline is mutually agreed upon.
3. **REVIEW AND APPROVAL** - LAHD will review the estimate and scope. If acceptable, a formal task order (directive) will be issued with the necessary approved signatures, including a mutually agreed expiration date for the directive.
4. **WORK EXECUTION** - Tidalis will manage the project and deliver the work as outlined in the approved task order, provide project milestone updates to LAHD Project Manager, and collaborate with LAHD's stakeholders as needed.

## 2.4 SERVICE LEVEL AGREEMENT (SLA)

### 2.4.1 INCIDENT RESOLUTION

Tidalis shall provide software maintenance, technical support, and development services to LAHD in accordance with the performance standards outlined below.

Type of response Software Defect severity	First Response	Commence Work	Resolution
Critical	< = 1 Hour	< = 1 Hour	Patch
Major	Next business day	Next business day	Next release or patch
Minor	Within 1 week	Based on release schedule	Subsequent releases

For any issue classified as Critical such as a system outage, data corruption, or a major disruption with no viable workaround, Tidalis must respond within one (1) hour of notification and start addressing the issue within one (1) hour of the initial report. The initial response must include an acknowledgment of the issue, assignment of a responsible team member, and a preliminary resolution plan.

For Major issues, which involve significant software defects or disruptions where a temporary workaround exists, Tidalis must respond by the next business day. The response should acknowledge the issue, confirm the workaround, and provide an estimated timeline for resolution.

For Minor issues, including cosmetic problems or low-priority enhancement requests, Tidalis is expected to respond within five (5) business days. This response must include an acknowledgment of the issue and a prioritization plan.

For recurring or high-impact issues, Tidalis shall conduct a formal Root Cause Analysis (RCA) process to identify underlying causes and implement permanent solutions, preventing recurrence.

Any issue identified as a software bug or defect, regardless of its priority level, will not count against LAHD's annual allocation of support hours. Bug fixes are considered part of standard maintenance and are the full responsibility of Tidalis.

On a monthly basis, Tidalis shall deliver the following performance reports aligned to LAHD's SLAs specified above to LAHD Project Manager.

- Ticket response and resolution metrics categorized by software module, priority, and resolution time with a scorecard indicating service performance to SLA criteria based on response time;
- Incident summaries, root cause analyses, and corrective actions taken;
- Trend analyses highlighting recurring issues and areas for improvement; and
- As-Needed Service Task Orders with detailed activities tracking and project milestone status.

These reports will be reviewed during monthly Tidalis and LAHD scheduled stakeholder meetings to discuss areas of improvement, and ensure SLA adherence, alignment with LAHD's operational and governance objectives.

#### **2.4.2 CHANGE MANAGEMENT PROCESS**

When a bug fix or enhancement is delivered, Tidalis must adhere to LAHD's structured deployment process. The changes must first be deployed to the Test environment, where LAHD will validate their technical functionality. After successful validation by LAHD, the changes are then moved to the User Acceptance Testing (UAT) environment for review and validation by business users.

Only after successful UAT testing and obtaining formal approval from LAHD including manager-level sign-off and proper documentation, the changes will be deployed to the Production environment. The documentation must include finalized deployment instructions, a rollback plan, and confirmation of UAT sign-off to ensure compliance with LAHD's Production Deployment Request (PDR) procedure.

All updates, communications, and status changes related to bug fixes, support issues, and enhancement requests must be thoroughly documented in the designated ticketing system. This documentation should include issue descriptions, progress updates, quality assurance testing outcomes, resolution and deployment notes to ensure accountability, transparency, and historical tracking.

#### **2.4.3 AS-NEEDED SERVICES RESOURCE ASSIGNMENT**

For all enhancement requests submitted by LAHD, Tidalis shall allocate staff to work on the assigned ticket, ensuring clearly defined roles and responsibilities within the ticketing system. A mutually agreed timeline for development and delivery must be established and strictly followed. Each delivery should include comprehensive documentation, such as user guides with screenshots and workflow diagrams, to assist end users and support staff

in understanding and utilizing the new functionality. Additionally, the corresponding ticket must contain testing notes, expected results, clear deployment instructions, and detailed rollback procedures. This level of documentation is essential for ensuring consistency, transparency, and operational readiness across all environments.

Tidalis is fully responsible for all internal knowledge transfer, research, onboarding, and resource transitions within its organization. LAHD is not expected to train new Tidalis team members. Any internal ramp-up time will not be billable and must be managed entirely at Tidalis's expense, without causing delays in project timelines or affecting support responsiveness.

All Tidalis assigned developers must possess the necessary system expertise, knowledge of integration, and familiarity with LAHD's workflows. Assigned developers should be able to perform effectively from the beginning.

All requests for VPN access for new staff who need to access the LAHD servers must be submitted at least two (2) weeks in advance and must be approved by the LAHD Project Manager. This process ensures that new personnel have adequate time to log in and familiarize themselves with the system before any critical staff member departs, thereby preventing delays and gaps in support.

#### **2.4.4 SUPPORT HOURS**

All support services must be provided during LAHD's standard business hours. After-hours support can be scheduled in advance for production releases, critical fixes, or emergency patches. Please note that the Port Pilots operate 24/7, and support related to this area may require special coordination outside of regular business hours.

#### **2.4.5 INSURANCE REQUIREMENT**

For any on-site activities such as meetings, site visits, or work performance, Tidalis must maintain current and sufficient insurance coverage on file and obtain prior approval from LAHD Risk Management. No on-site presence shall be allowed without fulfilling these requirements.

# Attachment 1

## SOFTWARE MAINTENANCE AND SUPPORT SERVICES

### 1.1 Licensee's Obligations

Licensee will provide Licensor with full, complete and timely information, support and access to Licensee's hardware, facilities and personnel as required by Licensor to provide the Maintenance Services, Support Services and remote access to the Licensee's system.

### 1.2 Licensor's Obligations

- (a) Subject to (i) the receipt of the applicable Maintenance Services and Support Services Fee and (ii) Licensee being (at all times) in compliance with the terms of this Agreement, Licensor will provide Licensee with the Maintenance Services and Support Services.
- (b) Licensor will not be held responsible for any delays or failures in providing the Maintenance Services or Support Services due to any changes or problems that are beyond the control of Licensor including, (i) acts or omissions of Licensee or third parties not under the control of Licensor; (ii) problems resulting from third party software, hardware or services used by Licensee; (iii) changes in Licensee's technical environment; (iv) delays in travel or manufacturing schedules of suppliers or shippers; or (v) events Force Majeure (as described in Clause 5.5 of the DEFINITIONS AND GENERAL TERMS AND CONDITIONS).
- (c) Licensor maintains the right to charge additional amounts for Maintenance Services and Support Services in the event that the Licensee changes the configuration of the Licensed Software. The rates and costs for such changes or additional services shall be at the Licensor's then current contracted hourly rate (either remote or on-site). Licensee will, within 30 days of receipt of applicable invoices, pay Licensor for such additional or different services.
- (d) Licensor recognizes the Licensee's processes for notice for a name change and will endeavor to provide as much notice as possible if the need should arise.

### 1.3 Maintenance Services

#### 1.3.1 Maintenance Releases:

Licensor will issue a new release of the Licensed Software a minimum of once per calendar year. The Licensee will be notified of releases and the accessibility of these on the Licensor's FTP server or similarly accessible internet secure data

transfer site. The Licensor will develop release notes and installation instructions to assist the Licensor. The Licensee is responsible for installation and deployment of the new release into the test and/or production environment. Upon request from the Licensee, the Licensor will support deployment of releases, and this work effort will be chargeable to available NDS hours or billable at the published daily rate. These releases will contain corrective modifications and may contain preventive, perfective and adaptive modifications as defined below.

**Corrective maintenance:** Reactive modification of a software product performed after delivery to correct discovered production problems.

**Preventive maintenance:** Modification of a software product after delivery to detect and correct latent faults in the software product, before they become production problems.

**Perfective maintenance:** Modification of a software product after delivery to improve performance, functionality and/ or maintainability. Licensor may improve its licensed modules by adding additional features at its discretion.

**Adaptive maintenance:** Licensor may, at its discretion, provide any combination of software fixes, updates, or patches that respond to environmental changes external to the Licensed Software, such as porting to new software, hardware or different operating systems recommended by Licensor, but without affecting functionality of the Licensed Software.

Licensee will have access to documentation on the planned release through Licensor's customer portal.

### **1.3.2 Customer Advisory Group (CAG) & Technical User Group (TUG):**

Licensor will host regular Customer Advisory Group ("CAG") and Technical User Group ("TUG") meetings. The CAG provides a forum for Licensee's input to the planning process and strategic direction for the Licensor's product suite. The TUG is a technically focused forum that provides input for imminent releases. The Licensor will enroll the Licensee's appointed personnel in the CAG and TUG. Licensee will be responsible for their personnel's travel and accommodation costs to attend any CAG or TUG meeting.

### **1.3.3 Maintenance Delivery:**

- (a) **24/7 support for Critical Software Defects** - Licensor will make available to Licensee a telephone service for access to qualified Licensor personnel capable of analyzing Software Defects. The Licensor's telephone service will be available 24 hours per day and 7 days ("24/7") a week to respond to any Software Defects deemed to be Critical based on the classification in Clause 1.3.4.
- (b) **Non-critical Software Defects** – The Licensor will respond to Licensee's reports of Software Defects not deemed to be Critical based on the

classification in Section 1.3.4. during Licensor’s normal business hours (Pacific Standard Time).

(c) **Issue Tracker Software Access** – Licensor will provide online issue tracker software for the Licensee to report Software Defects and related comments and/or questions. Licensor will respond to Licensee, in writing, through this online tool to provide a written account of actions taken on reported issues.

(d) **Maintenance Service Matrix:**

Maintenance Support	Telephone	Online issue tracker software
Critical Software Defects	24/7	24/7
Major Software Defects	Business Hours	24/7
Minor Software Defects	-	24/7

(e) **Primary Support** - Licensor will provide primary support remotely by way of a direct TCP/IP link into Licensee’s servers, (data base, application and web). Licensee will provide Licensor access through its firewall and maintain appropriate remote access software on their network. Routine maintenance, issues arising with the Licensed Software, Software Defect fixes, and updates may all be provided in this manner.

(f) **Remedies** - Licensor will analyse all identified Software Defects and use commercially reasonable efforts to fix these Software Defects remotely. Where Software Defects cannot be resolved remotely, Licensor may provide on-site service, with the Licensee paying the agreed upon on-site rate for the time.

### 1.3.4 Software Defect Severity Classification

Severity for Software Defects shall be reported by the Licensee, acting reasonably, using the following classification guidelines, provided that if Licensee does not specify a level, the level shall be deemed to be Minor:

(g) **Critical** - A Software Defect that affects the core functionality of the Licensed Software from operating and for which there is no workaround. It prevents use of the Licensed Software at all or may result in material data corruption or loss.

(h) **Major** – A Software Defect that prevents the core functionality of the Licensed Software from operating and for which there is a workaround (technically or by way of alternative business process). Use of the Licensed Software can proceed in a degraded mode.

- (i) **Minor** – A Software Defect that prevents non-core functionality of the Licensed Software from operating. It prevents use of the Licensed Software module or feature (technically or by way of alternative business process), that is non-compliant with the standards for presentation (layouts and forms) and that does not affect the operational integrity of the Licensed Software.

Any issue arising outside of the Licensee’s production environment for the Licensed Software is deemed to be Minor. A Software Defect that was originally reported as Critical or Major, but has been temporarily solved with a work-around, shall be automatically reduced in severity to Minor.

**1.3.5 Table for Response times:**

Type of response Software Defect severity	First Response	Commence Work	Resolution
Critical	<= 1 Hour	<= 1 Hour	Patch
Major	Next business day	Next business day	Next release or patch
Minor	Within 1 week	Based on release schedule	Subsequent releases

**1.3.6 Maintained Versions**

Licensor will provide the Maintenance Services only for the current version of the Licensed Software and the immediately prior version of the Licensed Software. Licensee acknowledges and agrees that Maintenance Services may include the requirement by Licensee to move to the then current version of the Licensed Software in order to resolve a particular issue (and that Licensor shall have no responsibility in respect of such issue unless and until Licensee moves to the most current version).

**1.3.7 No Guarantee**

Licensor does not guarantee that all or any Software Defects or problems with the Licensed Software or Support Services can be resolved or that all requests can be completed. Licensor shall use commercially reasonable efforts to fix or repair any defects in the Licensed Software. Any problem or issue reported by the Licensee which is not the result of a Software Defect will be considered to be a “Non-Software Defect Support” issue for which the Licensee will pay all costs related to identifying and remedying of the problem or issue including Licensor’s technician’s time, and other costs incurred.

## 1.4 Support Services

Licensor will use commercially reasonable efforts to provide the following "**Support Services**":

- (a) **Telephone Support** - Licensor will make available to Licensee a telephone service for access to qualified Licensor personnel, capable of providing the Non-Software Defect Support required, during Licensor's normal business hours. (Pacific Standard Time).
- (b) **Issue Tracker Software Access** - Licensor will provide online issue tracker software for the Licensee to report Non-Software Defect Support issues and related comments and/or questions. Licensor will respond to Licensee, in writing, through this online tool to provide a written account of actions taken on reported issues.
- (c) **Email Access** - Licensor will provide Non-Software Defect support through email communication on an ongoing basis.
- (d) **Non-Software Defect Support Services** – The number of hours of Non-Software Defect Support per year are 132 hours, included in this agreement. This is explicitly to be used for support and not for work. Licensor will keep track of all hours of service rendered and report these hours to licensee on a monthly basis. Credited Non-Defect Support hours will accrue for each year of the term and may only be used in the year in which they accrue. Unused hours expire on each anniversary of the Effective Date. Additional Non-Software Defect Support will be provided at the agreed upon remote rate for remote work.
- (e) **Additional Services / Work Authorizations**
  - (i) When service is needed, the client will provide request with scope of work to the Licensor. Licensor shall respond within three (3) business days of receiving the request from Licensee, and provide the quotation within a mutually agreed upon deadline. Once quote has been reviewed and approved, Licensee will issue a task order to Licensor and Licensor shall assign the work to a named individual to lead the work, provide an appropriate project plan and timeline estimate, perform the work required to implement, test, and provide associated documentation.
  - (ii) Licensor acknowledges the Licensee's sensitivity to fiscal year deadlines and will endeavor to meet all agreed upon deadlines.
  - (iii) Licensor commits to ensuring there is a team of developers to deliver in a timely way, as needed, for the work effort as described in 1.4 (e)(i). Licensor recognizes the Licensee's desire to move from reliance on a

single individual to a broader team of individuals with shared knowledge as necessary to provide the timely service needed.

## Exhibit B

### Compensation and Payment Schedule

#### 1. Overview

As compensation for the satisfactory performance of the services required by this Agreement, the City of Los Angeles Harbor Department's (LAHD) agrees to pay and Tidalis Americas Ltd. (Tidalis) agrees to accept in full satisfaction thereof, the following:

#### 2. Software License and Maintenance

The following software products are licensed to LAHD, including cost breakdown per license module:

#	Software Cost Breakdown Fiscal Year (FY) 2026/2027	Annual Maintenance and Support Fee
1	PortControl's Pilot Software	\$ 71,043
2	PortControl's Billing Software, Including Property Management and Common Operation Picture (COP)	\$ 241,366
3	PortControl's Pilot Mobile Dispatch App (PMDA) Mobile Services	\$ 14,390
<b>Total Software Cost for FY 2026/2027</b>		<b>\$ 326,799</b>

The annual fees for maintenance and support are outlined as follows:

Software Cost per Fiscal Year	Annual Maintenance and Support Fee
Total PortControl Software Cost for FY 2026/2027	\$ 326,799
Total PortControl Software Cost for FY 2027/2028	\$ 336,602
Total PortControl Software Cost for FY 2028/2029	\$ 346,701
Total PortControl Software Cost for FY 2029/2030	\$ 357,101
Total PortControl Software Cost for FY 2030/2031	\$ 367,814
<b>Total Not-to-Exceed Amount</b>	<b>\$ 1,735,017</b>

Maintenance and support fees may, at the sole discretion of Tidalis, be increased in each subsequent year up to a maximum of 3% annually above the Maintenance and Support Fee charged over the previous year's fee. The total amount of Klein Billing and PortControl Systems Software Maintenance and Support for the 5-year contract shall not exceed \$1,735,017.

Maintenance and support include 132 hours of Non-Software Defect Support per year, which can be utilized when issues are unrelated to software bugs or defects. These hours are tracked monthly, expire annually, and the additional support is billed based on the As-Needed Service remote rate.

Maintenance and support, based on the amount above and the following, will be included under the maintenance and support for Tidalis software already licensed to LAHD, at no additional charge:

1. Any modifications and new software, including new modules, developed by Tidalis at the cost of LAHD based on LAHD’s specifications and requirements.
2. Any new features developed by Tidalis for Tidalis software already licensed to LAHD.

Pricing for maintenance and support of any other new software will be negotiated at the time of purchase.

### 3. As-Needed Services

Funding for all system enhancements and tariff change initiatives will be sourced from CAPITAL resources. Any additional needs that may arise from the enhancement efforts will be funded through the IT Division’s operational expenditure (OPEX) budget. Below is the detailed cost breakdown for the As-Needed Service for the duration of the 5-year contract term.

Fiscal Year	Account: 542025 / IT Implementation and Consulting Services		
	CAPITAL Budget Project Number: 2561700	IT Division OPEX Budget	Total Not-To-Exceed Amount
2025/2026	\$ 221,280	\$ 15,000	\$ 236,280
2026/2027	\$ 418,560	\$ 33,000	\$ 451,560
2027/2028	\$ 423,360	\$ 36,300	\$ 459,660
2028/2029	\$ 407,360	\$ 39,930	\$ 447,290
2029/2030	\$ 396,160	\$ 43,923	\$ 440,083
2030/2031	\$ 202,080	\$ 24,158	\$ 226,238
<b>Total Not-To-Exceed Amount</b>	<b>\$ 2,068,800</b>	<b>\$ 192,311</b>	<b>\$ 2,261,111</b>

As-needed Off-site services shall be compensated at an hourly rate not to exceed Two Hundred Dollars (\$200.00) per hour. As-needed On-site services shall be compensated at an hourly rate not to exceed Three Hundred Dollars (\$300.00) per hour.

Compensation for as-needed services shall be based solely on the hourly rates set forth above. Consultants shall bear the cost of any overhead travel, or other expenses. Travel time will not be compensated.

The actual expenditures may vary from the estimated amounts listed for any given fiscal year in the table above. However, the total aggregate cost for software licenses, maintenance, and professional technical support services over a period of five years shall not exceed \$3,996,128.

All insurance coverage must be current and approved by LAHD Risk Management before Tidalis is authorized to perform any work or submit invoices. In addition, all invoices must be submitted before the directive expires. Late submissions may result in payment delays.

## **Attachment 2**

### **Services Fees and Payment Terms**

#### **1.1 Term**

The term of this Agreement shall commence on the completion of deployment or system acceptance, whichever is the later date and shall continue thereafter for a period ending 60 months, unless and until terminated as provided hereunder (the "**Initial Term**").

**1.2** The Licensor will provide the Maintenance Services and Support Services as described in this Agreement including the definition of defect and non-defect support.

**1.3** Upon expiration of the Initial Term, unless otherwise terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.

#### **1.4 Termination**

Licensor will have the right to terminate this Agreement:

- (a) Immediately in the event that the Licensee fails to pay the Maintenance Services and Support Services Fee as required under this Agreement; In this case, Licensor has the right to invoice all remaining amounts under this contract at once, plus a penalty of 10%.
- (b) Immediately in the event of the insolvency, bankruptcy or voluntary dissolution of the Licensee; or
- (c) On 30 days written notice if an event of Force Majeure (as described in Clause 5.5 of the DEFINITIONS AND GENERAL TERMS AND CONDITIONS) persists for more than 60 days provided that no refunds of any pre-paid amounts will be paid by Licensor; or
- (d) If the Licensee has materially breached any provision contained in this Agreement and has not cured the breach within 30 days of receipt of written notice thereof. In this case Licensor has the right to invoice all remaining amounts under this contract at once, plus a penalty of 10%.

#### **1.5 License Agreement**

This Agreement shall automatically terminate without notice if the License Agreement expires or terminates for any reason.

## **1.6 Effect of Termination**

Upon termination of this Agreement for any reason, Licensor will immediately cease providing any Maintenance Services and Support Services. No refund for License Fees or Maintenance and Support Fees are applicable.

## **1.7 Maintenance Services and Support Services Fees**

Licensee shall pay Licensor the Maintenance Services and Support Services Fees listed below:

- (a) The Licensee shall pay to Licensor each year an annual Maintenance Services and Support Services Fee per Exhibit B of the main Agreement. Note all fees are net and exclude any applicable taxes or duties.
- (b) The Maintenance Services and Support Services Fee is based on the Licensed Software.
- (c) The Licensor shall not provide any Maintenance Services and Support Services to the Licensee unless the Maintenance Services and Support Services Fee is paid in full on or before the due date.
- (d) All subsequent Maintenance Services and Support Services Fees are due and payable prior to each anniversary date following the initial fee payment.
- (a) If the Licensee ceases, at any time, to pay the Maintenance Services and Support Services Fee for the Maintenance Services and Support Services, in order to re-initiate the Maintenance Services and Support Services, Licensee shall pay all of the amounts that otherwise would have been payable for the period of time in which no Maintenance Services and Support Services Fees were paid and prepay the then current Maintenance Services and Support Services Fee for the next 12 month period.
- (e) Payment shall be in US dollars and will be due on presentation of invoice. Payments not made by their invoiced due date will accrue interest from the date due to the date paid at the lesser rate of one percent (1%) per month or the maximum allowed by applicable law. If a payment is late, Licensor shall be entitled to suspend performance under this Maintenance and Support Agreement and, at its option, terminate the Agreement.
- (f) Rates for Additional Services as outlined in Exhibit B. No travel expenses to be reimbursed. These rates are discounted from the Tidalis current posted rate and frozen for the 5-year duration of this agreement to recognize the volume of work effort the Port is seeking to do in the next 5 years.

## 1.8 Increases in Maintenance Services and Support Services Fee

After the first year of the Term, the Maintenance Services and Support Services Fee may, at the sole discretion of the Licensor, be increased in each subsequent year to a maximum of 3% annually above the Maintenance Services and Support Services Fee charged in the immediately previous year.

## 1.9 Additional Services

Any request for services outside the scope of this Agreement, including training or changes to the Software Solution, will be submitted in writing by Licensee for Licensor's written approval, prior to the commencement of work on the changes or provision of the additional services. The rates and costs for such changes or additional services shall be at the Licensor's agreed upon hourly rate. Approval via email or Licensor's web-based issue tracking system will constitute written approval for the purposes of this clause. Additional functionality, changes, modules, etc. purchased in the future may increase the annual maintenance fee from that time forward.

## ARTICLE 2 DEFINITIONS AND GENERAL TERMS AND CONDITIONS

The "Definitions and General Terms and Conditions" as attached shall apply to this Agreement.

### D. DEFINITIONS AND GENERAL TERMS AND CONDITIONS

The following definitions and terms and conditions shall form part of the License Agreement, Maintenance and Support Agreement and any addendums, statement of work or change requests regarding the Licensed Software entered into by the parties unless otherwise expressly agreed to in writing.

#### DEFINITIONS

Capitalized terms used in this Agreement shall have the meaning ascribed below:

**"Agreement"** means the Software License Agreement and the Maintenance and Support Agreement and all subsequent addendums and other any change requests, work orders or other agreements entered into by the Parties regarding the Licensed Software, except that where the

term is used in one of the Related Agreements, it shall only mean that particular Related Agreement.

**"Configuration"** means the process of adapting the Licensed Software to Licensee's requirements without changing Source Code

**"Core Functionality"** means execution of Licensee's routine workflow

**"Enhancement"** means an improvement to an existing feature or addition of a new feature

**"Intellectual Property Rights"** means any copyright, copyright registration, copyright registration application, patent right (including but not limited to issued or granted patents and patent applications), trademark, trademark registration and

application, trade name, trade name registration and application, registered and unregistered design right, right of priority, confidential processes and information, trade secret, know how, invention, inventor's notes, drawings and designs and any right in any of the foregoing, by whatever names those various rights may be known as anywhere in the world, and all such other rights of a like nature, arising now and in the future;

**"License Fee"** is the fee specified in the License Agreement for the License purchase.

**"License Agreement"** means the License Software Agreement between the Licensor and Licensee attached to Agreement.

**"Licensed Software"** means an Object Code version of the modules of the Licensor's software and the architecture and structure of the related database that has been licensed to the Licensee pursuant to the License Agreement;

**"Marks"** means Licensor's trademarks, trade names, service marks, logos, designs and service names;

**"Non-Software Defect Support"** is service provided by the Licensor at the request of the Licensee in regards to the use of the Licensed Software, which is not directly related to supporting and correcting a Software Defect or not included as part of additional Maintenance Services Work under this Agreement.

**"Object Code"** means computer code that is readable and usable by machines but not generally readable by humans without reverse assembly, reverse compiling or reverse engineering;

**"Person"** means any individual, company, partnership, trustee, trust or unincorporated association, joint venture, syndicate, sole proprietorship, executor, administrator, or

other legal representatives, regulatory body or agency, government, governmental agency, authority or entity, however designated or constituted;

**"Related Agreement"** means an agreement, referenced in the Agreement.

**"Software Defect"** is an error, flaw, failure, or fault in the licensed software that produces an incorrect or unexpected result, or causes it to behave in unintended ways

**"Software Solution"** means the instance of the Licensed Software configured and installed in accordance with the Software Solution Agreement.

**"Source Code"** means computer code and related system documentation that is in human-readable form, including all comments and any procedural code such as job control language;

**"Territory"** means the territory specified in Clause 1.1 (a) of the License Agreement; and

**"Warranty"** has the meaning given in Clause 3.1 of the License Agreement.

## INTERPRETATION

(a) The words "hereof", "herein", "hereunder" or "hereto" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Clause unless otherwise stated. All references to Section or Clause numbers refer, unless expressly stated otherwise, to the Section or Clause in the same Agreement having those numbers.

(b) In this Agreement reference to something in the masculine form includes the feminine and neuter forms and reference to the singular includes the plural and vice versa and modifications to the provisions of this Agreement may be made as the context requires.

(c) The word “including”, when followed by any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

(d) The headings used in this Agreement are for convenience and reference only and shall not affect the construction or interpretation of this Agreement.

(e) In the event of an inconsistency or conflict between these General Terms and Conditions and the Agreement or an attached Related-Agreement, schedule, or exhibit thereto, the wording of the Related-Agreement (or schedule or exhibit thereto) shall prevail.

## **ARTICLE 1 WARRANTY**

### **1.1 Limitation of Warranties**

Except as expressly set out in the attached agreements, licensor makes no other warranties, conditions or representations with respect to the licensed software or otherwise under this agreement, and the warranties expressly provided in the attached agreements are in lieu of all other warranties, representations and conditions, express or implied, including but not limited to the implied warranties of merchantability or fitness for a particular purpose. Without limiting the foregoing, licensor does not warrant that the licensed software will meet the requirements of licensee, be non-infringing or that the operation of any licensed software will be free from interruption or errors.

## **ARTICLE 2**

### **INDEMNITY AND LIMITATION OF LIABILITY**

#### **2.1 No Consequential Damages**

Except for infringement claims set out Clause 1.1, in no event shall licensor be liable to licensee under any theory of law, including, contract, negligence, strict liability or other legal or equitable theory, for any loss of profits, Business, Revenue or customers, or for any indirect, special, incidental, punitive or consequential damages of any kind, even if licensor has been advised of the possibility of such damages.

#### **2.2 Limitation to Liability**

Except for infringement claims set out in Clause 1.1, in any circumstances where licensor becomes liable to licensee under this agreement or in relation to the licensed software, in no event will the licensor’s total aggregate liability for any and all damages arising out of, or related to this agreement, for any and all claims related to the license granted to the licensee for the licensed software exceed the amount actually received by licensor for the one-time License Fee under this agreement.

#### **2.3 Licensor**

For the purposes of all Clauses, “Licensor” shall include the Licensor and its directors, officers, employees, owners, affiliates, distributors, licensors, suppliers, agents, representatives or other licensees.

#### **2.4 Infringement Claims**

(a) Licensor shall defend, at its expense, any action brought against Licensee to the extent that such action is based upon a claim that the Licensed Software infringes any copyright or patent rights for any patent issued as at the Effective Date of any third

party in the Territory, and Licensor will pay any settlement amount or final judgment awarded by a court against Licensee attributable to such claim provided that in the event of any such claim:

- (i) Licensor shall have sole control and rights to approve of any such defense, action or settlement negotiations;
- (ii) Licensee notifies Licensor promptly in writing of such claim, makes no admissions of liability or otherwise compromises Licensor's defense or settlement of such claim; and
- (iii) Licensee, at Licensor's expense (except for reasonable work effort of Licensee's employees to obtain information), provides Licensor with all relevant information available to Licensee in connection with the claim.

(b) If the Licensed Software as delivered to Licensee is held to infringe the copyright or patent rights of any patent issued as at the Effective Date in the Territory of any third party and Licensee is enjoined from using that Licensed Software, or if Licensor reasonably believes that the Licensed Software so infringes, Licensor may, at its expense, do one of the following: (i) procure for Licensee the right to continue to use the Licensed Software free from any liability for that infringement, (ii) replace the Licensed Software with a non-infringing substitute which substantially provides materially the same functionality of the Licensed Software, or (iii) if Licensor determines that Clause (b)(i) and (b)(ii) are not commercially feasible, terminate this Agreement.

(c) Clauses as stated here are the entire liability of licensor for any infringement or violation of any right of any third party.

## **2.5 Limits on Indemnity**

Licensor will have no liability or obligation under Clause 2.4(a) for infringement of any third party Intellectual Property Rights and will not be responsible for the Licensed Software related to:

- (d) Any combination of the Licensed Software with non-Licensor hardware, equipment or software by a Person other than Licensor;
- (e) Any modification of the Licensed Software (or part thereof) unless such modification was made by the Licensor; or
- (f) Any misuse or use of the Licensed Software contrary to the terms and condition of this Agreement or if Licensee is otherwise in breach of this Agreement.

## **ARTICLE 3 CONFIDENTIAL INFORMATION**

### **3.1 Confidential Information**

(g) For the purposes of this Agreement, "**Confidential Information**" shall mean all information and materials, whether in written, oral, electronic, graphic or any other form, furnished or disclosed by or on behalf of the Licensor to the Licensee, including any information issued, used, disclosed or developed in connection with the Licensed Software including any materials provided pursuant to any separate support and maintenance agreement for the Licensed Software between the parties. The Licensee shall not disclose, directly or indirectly, any of the Confidential Information to any third party without the express prior written consent of the Licensor, nor shall the Licensee use any of the Confidential Information, except as expressly permitted to fulfil its obligations under this Agreement.

(h) The foregoing restrictions will not apply to information which Licensee can reasonably establish is (i) publicly available

without breach of this Agreement; (ii) already lawfully known to or in the possession of the Licensee prior to receipt of such information from the Licensor as evidenced by written records; (iii) lawfully received on a non-confidential basis from a third party having the right to disclose such information without restriction; or (iv) required to be disclosed by law or by the order of any judicial, administrative, or similar body with enforcement powers; provided, however, that the Licensee shall promptly notify the Licensor of this requirement in writing, and shall co-operate reasonably with the Licensor, at the Licensor's expense, in preventing and minimizing the extent of the disclosure.

(i) Licensee acknowledges that disclosure of any Confidential Information in breach of this Agreement will cause significant harm to Licensor and that remedies at law may be inadequate to protect against such breach. Accordingly, Licensee acknowledges that Licensor is entitled, in addition to any other relief available to it, to the granting of injunctive relief without proof of actual damages, security for costs or the requirement to establish the inadequacy of any of the other remedies available to it. Licensee covenants not to assert any defense in proceedings regarding the granting of an injunction or specific performance based on the availability to Licensor of any remedy.

## **ARTICLE 4 PERSONNEL**

### **4.1 Personnel**

Neither party will, during the term of the Agreement and for 1 year afterwards, hire any consultant or employee of the other party without obtaining the prior written approval of the other party. A party breaching this provision shall pay to the other party 100% of the annual

compensation of any such consultant or employee, including, without limitation, bonuses, such amount being a genuine pre-estimate of damages and not a penalty.

## **ARTICLE 5 MISCELLANEOUS**

### **5.1 Assignment Prohibited**

Licensee may not assign any of its rights, interest or obligations (in whole or in part) in this Agreement without the prior written consent of Licensor, which consent Licensor may withhold for any reason, and any attempt by Licensee to assign, sub-license or delegate any rights, duties or obligations which arise under this Agreement without such consent will be void and will be deemed a material breach of this Agreement. Any assignee will agree to be bound by the terms and conditions of this Agreement in writing prior to any assignment.

### **5.2 Taxes Extra**

Licensee agrees to pay all applicable sales or use taxes and other charges of any kind (except for taxes calculated or payable upon Licensor's net income or capital) imposed by any federal, regional, provincial, state or local governmental entity for products or services provided by Licensor under this Agreement. Licensee shall indemnify and hold Licensor harmless from all claims and liability arising from Licensee's failure to pay any such taxes or charges.

### **5.3 Further Assurances**

Licensee shall promptly execute and deliver to Licensor at the cost of Licensee such further documents and assurances and take such further actions as Licensor may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interests

and remedies intended to be created in favour of Licensor.

#### **5.4 Governing Law**

This Agreement will be construed in accordance with the laws of the State of California applicable therein without regard to conflict of law principles and each party hereby irrevocably submits to the exclusive jurisdiction of the courts of the State of California with respect to any dispute arising hereunder, except for any applications for injunctive relief by Licensor, which may be brought in any jurisdiction. Each party hereby waives any right to object to the improper venue or forum of such courts.

#### **5.5 Force Majeure**

A party shall not be liable and not deemed to be in default for any delay or failure in its performance under this Agreement or interruption of service resulting directly or indirectly from any event beyond the reasonable control of the affected party, including, but not limited to, natural acts, civil or military authority, acts of public enemy, wars, riots, civil disturbances, accidents, fire, explosions, earthquakes, floods, strikes, lockouts, labor disturbances, shortages of suitable parts, labor or transportation, or delays caused by suppliers, and the party responsible for performance will be excused from performance of the obligation affected by such event to the extent and for as long as such circumstances prevail. The lack of money, credit or financing shall be deemed to not be an event beyond a party's reasonable control.

#### **5.6 Export Controls**

Licensee will comply with all export laws, restrictions and regulations having application to it, whether of Canada, the United States or any foreign agency or authority, and has not and will not export, re-export or otherwise transmit, download

or use, directly or indirectly, any software, information, data, or other materials received under this Agreement in violation of any such applicable restrictions, laws or regulations.

#### **5.7 No Implied Waivers**

Any failure by a party to enforce at any time any of the provisions of this Agreement, including without limitation the termination provisions of the Agreement, shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce such provision or exercise any other rights available to it under this Agreement or at law.

#### **5.8 Severability**

If any provision of this Agreement is unenforceable or invalid for any reason whatsoever, such unenforceability or invalidity will not affect the enforceability or validity of the remaining provisions of this Agreement or the enforceability or validity of any other agreement incorporated in this Agreement, and such unenforceable or invalid provision will be severed from the remainder of this Agreement. Termination of any work order or of any agreement incorporated in this Agreement will similarly not affect the enforceability or validity of the remaining provisions of this Agreement or the enforceability or validity of any other agreement incorporated in this Agreement,

#### **5.9 Headings**

Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement

#### **5.10 Entire Agreement**

This Agreement will be interpreted in accordance with its terms and without any strict construction in favour of or against either party. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof,

and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, including, without limitation, the terms of any purchase order. No amendment to or modification of this Agreement will be binding unless agreed to in writing and signed by a duly authorized representative of both parties.

#### **5.11 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **5.12 Survival**

Those clauses, which by their nature ought reasonably to survive the expiration or termination of this Agreement, shall survive.

**EXHIBIT C**  
**MONTHLY SUBCONSULTANT MONITORING REPORT**

Instructions: Please indicate the SBE/MBE/WBE/OBE/DBE participation levels achieved for the month of \_\_\_\_\_ covered by the referenced contract number.

Contract No. \_\_\_\_\_ Division \_\_\_\_\_ Contractor Administrator \_\_\_\_\_

Contractor \_\_\_\_\_ \*Group \_\_\_\_\_ Contract Title/Project \_\_\_\_\_

Contract Amount \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Total Amount Invoiced to Date \_\_\_\_\_

Original Proposed Subcontractor Percentage      SBE                      MBE                      WBE                      OBE                      DBE

				PROPOSED		ACTUALS		
	Name of Subcontractor	Type of Work Performed	Group SBE/MBE/WBE/OBE/DBE	Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**Directions:**

Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount

Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date

Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

## **EXHIBIT D**

### **AFFIRMATIVE ACTION PROGRAM PROVISIONS**

#### **Sec. 10.8.4 Affirmative Action Program Provisions.**

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

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

## **EXHIBIT D**

### **AFFIRMATIVE ACTION PROGRAM PROVISIONS**

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
  
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
  
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
  
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
  
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
  
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
  
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it

## **EXHIBIT D**

### **AFFIRMATIVE ACTION PROGRAM PROVISIONS**

registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;

## **EXHIBIT D**

### **AFFIRMATIVE ACTION PROGRAM PROVISIONS**

4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

## EXHIBIT E

### SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

#### (1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBEs). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBEs, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBEs, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to [www.sba.gov](http://www.sba.gov) for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%, including 0% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is 541511. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$34.0 (USD) million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

#### (2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as: **EXHIBIT E**

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

## AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Consultant Description Form** is true and correct and includes all material information necessary to identify and explain the operations of

Tidalis Americas Ltd.

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Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE    VSBE    MBE    WBE    DVBE    OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$5,000,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

LBE     Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature:  \_\_\_\_\_  
Printed Name: Pavel Skournik

Title: Managing Director  
Date Signed: June 13, 2025

## Consultant Description Form

### PRIME CONSULTANT:

Contract Title: Agreement between The City of Los Angeles Harbour Dept. And Tidalis Americas Ltd.  
for Billing, Port Pilot and Property Management Systems Software Licenses, Maintenance and Support Services

Business Name: Tidalis Americas Ltd. RAMP ID#: 105558

Award Total: \$ \_\_\_\_\_

Owner's Ethnicity: N/A Gender N/A Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO X (Check only one)

Primary NAICS Code: 541511

Address: 3500 Gilmore Way - Unit 300

City/State/Zip: Burnaby, British Columbia, V5G 0B8

County: Canada

Telephone: ( 01 ) 604 689 7117 FAX: ( 01 ) 604 689 7119

Contact Person/Title: Pavel Skournik

Email Address: pavel.skournik@tidalis.com

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### SUBCONSULTANT:

Business Name: \_\_\_\_\_ RAMP ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONSULTANT:

Business Name: \_\_\_\_\_ RAMP ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email address: \_\_\_\_\_

## Consultant Description Form

### SUBCONSULTANT:

Business Name: \_\_\_\_\_ RAMP ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONSULTANT:

Business Name: \_\_\_\_\_ RAMP ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

### SUBCONSULTANT:

Business Name: \_\_\_\_\_ RAMP ID#: \_\_\_\_\_

Award Total: (% or \$): \_\_\_\_\_

Services to be provided: \_\_\_\_\_

Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES \_\_\_\_\_ NO \_\_\_\_\_ (Check only one)

Primary NAICS Code: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: (    ) \_\_\_\_\_ FAX: (    ) \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

Email address: \_\_\_\_\_

## EXHIBIT F

### Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

#### (c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) Mandatory Contract Provisions Pertaining to Equal Benefits. Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.