

City Council Staff Report

**Applicant:**

Mapleton City

Prepared By:

Camille Brown

Public Hearing:

No

Attachments:

Resolution

Bid from GemComm

REQUEST

Consideration of a Resolution authorizing the City Administrator to purchase audio and visual equipment for the Council Chambers for recording and streaming purposes for public meetings using CARES Act funds.

BACKGROUND & DESCRIPTION

In 2020, due to the COVID-19 pandemic there has been a need to hold virtual public meetings. The current equipment in the council chambers is still analog and having to stream meetings will require updated equipment to have a digital system.

A company came to a City Council meeting to do a trial run with a web camera that allowed streaming the council meeting to YouTube. The recording was ok, but did not project the sound as good as expected.

GemComm reached out to our city to do a bid for equipment that would give the city a new digital system. The bid is attached for a total amount of \$28,995.00. Two other companies were contacted to obtain bids, but they did not follow through and get the bids back to me.

This proposal will provide the funding necessary to purchase an audio and video equipment to allow for streaming public meetings to residents to view the meetings from their homes so in house numbers are low for COVID-19 social distancing requirements.

EVALUATION

Cost of equipment: \$28,995.00

RECOMMENDATION

Authorize the City Administrator to purchase audio and visual equipment for the Council Chambers using CARES Act funds.

RESOLUTION NO. 2020-

A RESOLUTION OF THE CITY OF MAPLETON, UTAH AUTHORIZING THE CITY ADMINISTRATOR TO PURCHASE AUDIO AND VIDEO EQUIPMENT FOR THE COUNCIL CHAMBERS FOR RECORDING AND STREAMING PUBLIC MEETINGS USING CARES ACT FUNDS

WHEREAS, Mapleton City has received \$746,862 of CARES Act funds; and

WHEREAS, the Administration Department is in need of an update to the audio and video equipment in the Council Chambers that will aide in being able to stream public meetings; and

WHEREAS, Mapleton City and Utah County have determined that this purchase meets the requirements to use CARES Act funds;

NOW THEREFORE, be it resolved by the City Council of Mapleton, Utah, that the City Administrator is authorized to purchase audio and visual equipment for the Council Chambers for recording and streaming purposes for public meetings using CARES Act funds.

This resolution adopted this 21st day of October 2020, by the City Council of Mapleton City, Utah.

Dallas Hakes
Mayor

ATTEST:

Camille Brown
City Recorder



Council Chamber AV Expansion

Mapleton City

10.1.2020

Shawn Sandberg

Systems Engineer

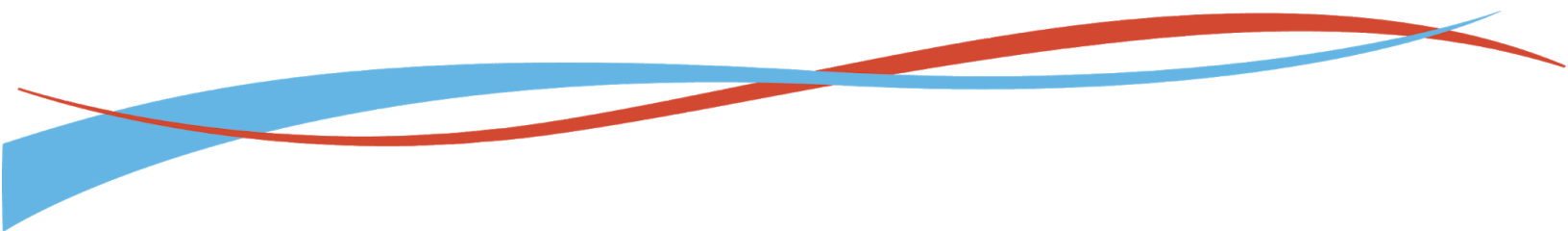
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(801) 404-4111

GENCOMM, 12393 S. Gateway Park Place, Suite 400, Draper, UT 84020

Current Situation

Mapleton city is currently using an antiquated audio system with quirks and inefficiencies that they shouldn't have to deal with in the twentieth century. Analog audio recorders, cracking microphones, huddled around a desktop phone are soon to become problems of the past.



Scope of Work

The following proposal includes the plan for the requested AV upgrades and head-end processing. The fee for installation, consulting, training, engineering, programming, and commissioning are included for each option. GENCOMM™ will closely follow the AV9000 standards as set forth by AQAV during the execution of the project..

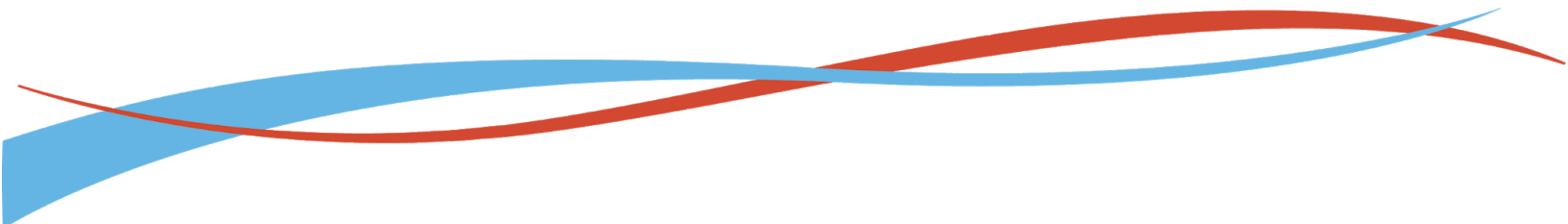
GENCOMM will conduct an initial and ongoing scope development meetings with Mapleton City with the goal of defining the following items:

- Review goals, objectives, and desired key outcomes for the project
- Discuss and determine the inclusion and convergence of various design layout options in the planning process and the benefits of each
- Discuss issues, criteria, special considerations, and vital components to be included in the design file
- Develop minimum design standard solution sets
- Determine planning and implementation timelines
- Identify specific deliverables, including technical memorandums
- Establish project communication protocols

AV Expansion Options

New Control With Digital Audio

Leveraging the processing power of Digital Audio and Control processors, GENCOMM will provide one Touch Panel for the room's control. The panels will be a custom program after discussing with the city about what they want to have automated, and where they would like to have some control. As an example: a "prepare for council meeting" button can be set to turn on the TV, set the cameras for proper viewing, turn on the mics,, and be ready for the meeting to start. Once the meeting is ready to begin, press the "start meeting" button which can then start streaming to youtube and facebook, start the audio recording and start the video recording. Once the citizen comments section is up click the "Citizen comments" button and an on screen timer appears and the window processor now shows the podium or the video feed from the remote participant. Once they start talking the timer begins and once it runs out their audio is muted with an audible ding in the room. The possibilities are endless and will future proof the room allow the room to be a tool to help the people of Mapleton for the next decade. GENCOMM has planned to meet with the city



to find out the different workflows and to make the meeting as simple to run as possible while providing an excellent experience regardless of if you're at home or in the room. Record a direct feed from each individual mic, or from groups with multitrack recording, you'll never miss another word on the record. This will replace the amplifier, cables and speakers with new equipment, placing a speaker above each of the council so they can each receive mix minus voice lift all able to hear amplified reinforcement of their fellow members without going into feedback while also providing excellent audio for all remote participants and media in the room.

- (1) Core processor
- (1) Touch Panel
- (1) Amplifier
- (1) Surge suppressor

Video Streaming Option

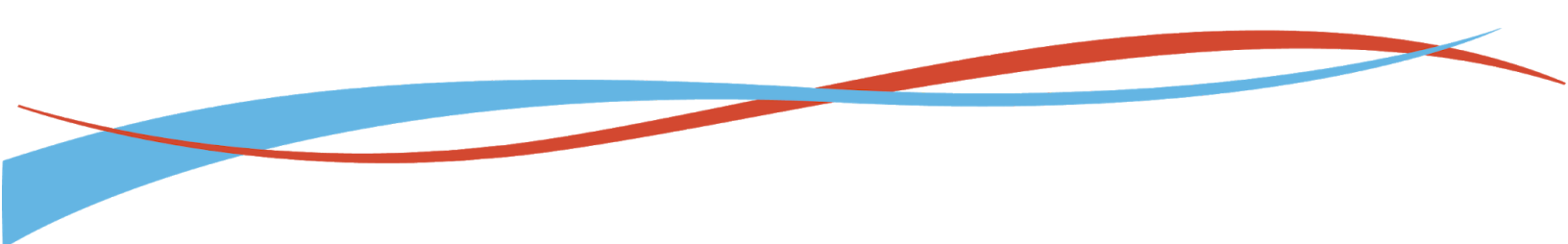
Streaming server will be installed to enable easier and more practical streaming of city council and other meetings. Easily select multi-streams of the event to multiple platforms simultaneously, such as YouTube, Vimeo, Facebook Live, and many others is built-in. The unit also has a builtin harddrive for yet another option of backing up the council meetings to always ensure redundancy in the record. Easily switch between the two cameras with the camera controller.

The following equipment will be added, removed or reused as part of this option:

- (1) Streamer
- (2) PTZ Cameras
- (2) Mounting brackets
- (1) Camera controller
- Mounting gear and dressings

Managed Services Subscription

This subscription service provides device monitoring for all edge devices, alerting agents of any issues within seconds of the issue. This will provide peace of mind as it will ensure the system is fully functional at all times. This service includes periodic updates to the latest features, quarterly scheduled on-site maintenance, and 3 hours/year that can be used for, free on-site service, free remote service, touch panel modifications, programming



modifications, or on-site end user training. The goal is to have this system be as useful as possible, evolving with the city to exceed their needs. As the city and those that use the chambers change, the system can easily be adapted. When changes occur or new personnel are using the system. GENCOMM will train on the system to ensure the functionality is clear and easy to use. Where needed, GENCOMM can be contacted for rapid response, remotely able to support any concerns that arise, or when needed send a support agent on-site. This ultimately changes the relationship into a partnership where we can both work together to ensure success.

Internet access is required (does not need access to building LAN)

New Equipment

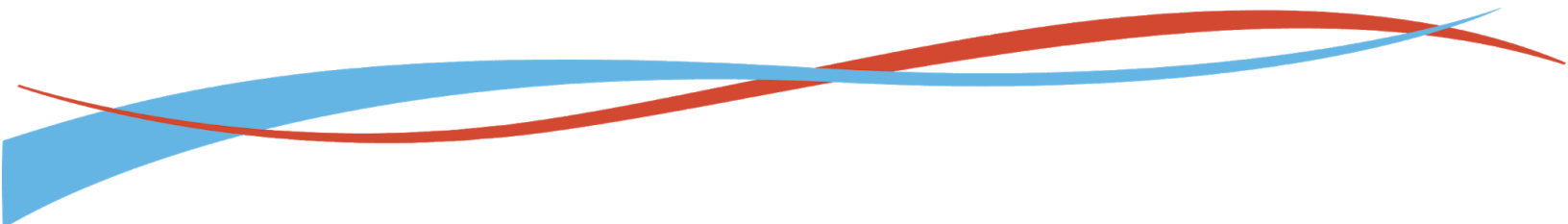
- GENCOMM Managed Services kit

Included Services

- Zoom QSC Certified Integrator (for QSC Zoom Rooms)
- Client alerting (can send texts, emails, or a message to Slack, Teams, or Google Chat)
- GENCOMM NOC alerting
- Remote service
- Quarterly on-site maintenance
- 3 hours/year that can be used on:
 - On-site service
 - Remote rapid response service
 - Touch panel modifications
 - Programming modifications
 - On-site end user trainings

4k IP Video Matrix Upgrade

Upgrading to a new IP matrix system will add many new features such as KVM, 4k Video, imperceivable sub-frame latency, video previews on the touch panel, lightening fast switching speeds, a much smaller physical footprint, less than half of the existing systems power draw. This will future proof the system for the foreseeable future and allow the council to expand and grow all throughout the city's network as they need. This upgraded equipment is extremely robust and is used in the House of Representatives, the Senate, Department of Defense and on the International Space Station providing an extremely reliable solution. Additionally this will add a new window processor that will allow for both recording and window processing up to 4 windows expanding the functionality of the current system operations.



New Equipment

- (1) 4k Encoder
 - Clerk location
- (3) 4k Decoders
 - Streaming
 - Projector
 - Monitor

Training

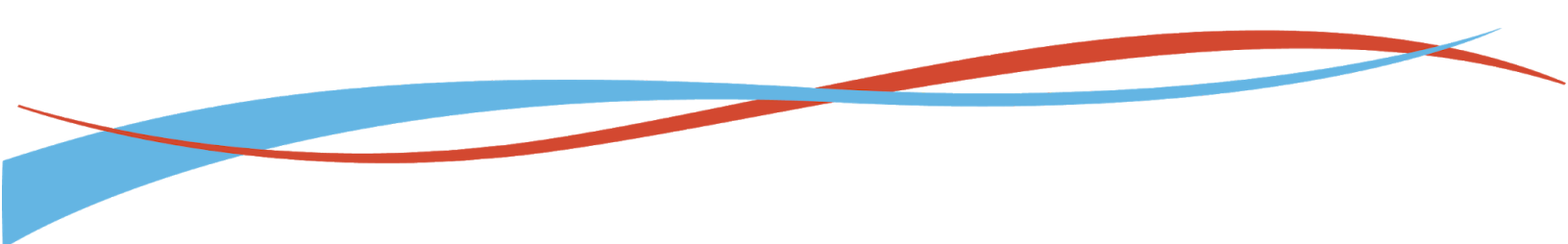
A formal system training will be conducted by GENCOMM to the facility's coordinators, technical support and/or other employees that wish to attend. The training will include a half day of the GENCOMM engineer onsite for the formal training as well additional questions the staff has. This time should be sufficient to cover the basics of the system and individual room functionality and how the head-end equipment can be used for more advanced functions.

Services

- Installation of equipment specified above.
- Test for proper installation.
- Training for new equipment.
- Cabling and connectors

Exclusions

- High voltage wiring will need to be performed by a licensed electrician and is not included in this proposal.
- Surface and finish work (i.e. concrete, tile, wallboard, ceiling tile, etc).
- Core drilling
- Carpet removal and replacement.
- Network Switches (Owner Furnished Equipment)



Fees and Options

Listed below are the prices for the main system components, any additional options, and warranties.

System Components

Accept

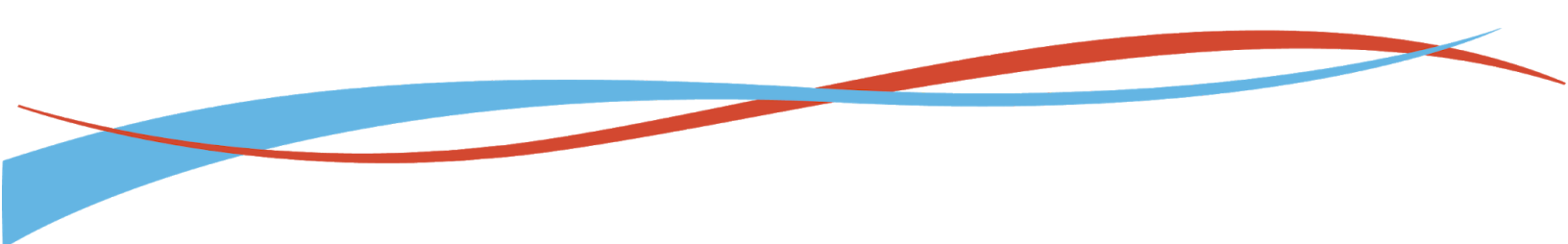
_____ \$9591.00 – New Control with Digital Audio - Quote #18146: All services specified above.

_____ \$11,185.00 – Video Streaming Option - Quote #18123: All services specified above.

_____ \$1750.00/ Billed Annually - Managed Services Subscription - Quote #17751: All services specified above.

_____ \$6,469.00 – 4k IP Video Matrix Upgrade - Quote #18147: All services specified above.

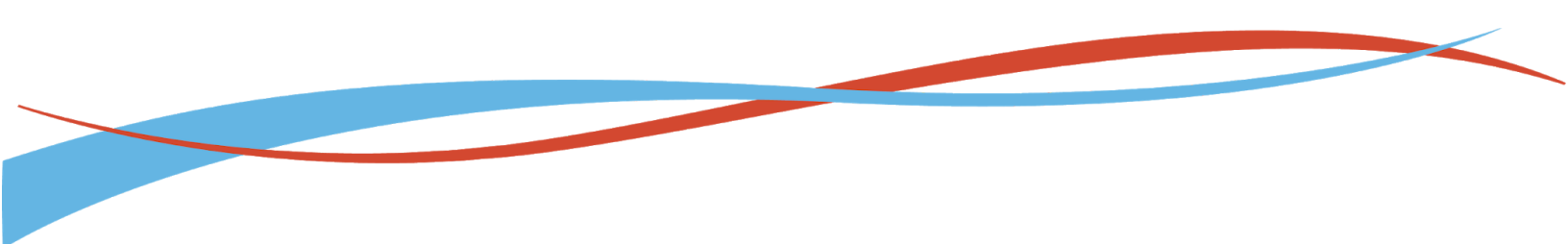
_____ **\$28995.00 - Accept All** options and services as listed above.



Warranty

GENCOMM™ warrants the system under normal use, to be free of defects in material and workmanship for the period of one (1) year from the date of substantial inspection and will repair or replace at GENCOMM™'s option any equipment to be found defective. Warranty will include telephone support for assistance. Service or repair by an agency or person not authorized by GENCOMM™ renders the warranty void releasing GENCOMM™ from any further responsibility or obligation. The warranty will not apply to damage or deterioration or malfunction resulting from: 1) Accident, misuse, abuse, neglect, fire, water, lightning or other acts of nature, unauthorized product modification or failure to follow instructions; 2) Problems caused by associated equipment not supplied under this contract; 3) Problems with owner-furnished equipment. Some of the major suppliers of equipment for this project may provide additional warranties that do not apply to GENCOMM™'s warranty.

Please note, extended warranty and annual maintenance are not required and can be removed if desired prior to final contract award. The included standard warranty is 90-days from substantial completion.



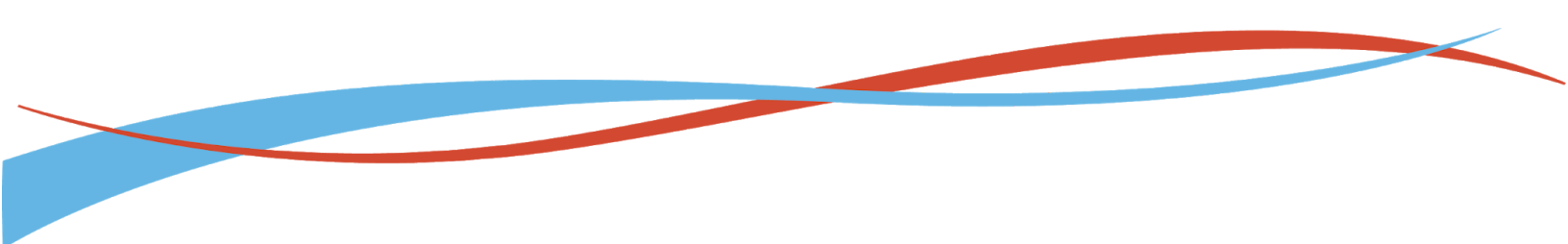
Terms

The total cost for this system package is the sum of the selected options above, amounting to: \$_____. Payment terms must be chosen from one of the following:

- ☐ 30% down with a signed contract, 30% due upon receipt of goods in our warehouse (client may inspect property), monthly progress billing based on work performed, payable within 30 days from date of invoice. A 1.5% monthly interest fee will be assessed for late payments after 30 days from date of invoice.
- ☐ 50% down, and 50% upon project completion, payable within 30 days from date of invoice. A 1.5% monthly interest fee will be assessed for late payments after 30 days from date of invoice.
- ☐ Lease Option. Please discuss this option with your GENCOMM™ representative for monthly payment options. Separate lease agreement required.
- ☐ Credit card. A 1.3% processing fee will be assessed for use of credit cards, or 3% fee for use of American Express. (Note: 100% will be billed on the card upfront unless one of the 30% or 50% options is also selected above)
- ☐ Card Number: _____
- ☐ Expiration Date: _____ / _____ Security Code: _____
- ☐ Name on Card: _____
- ☐ Billing Address: _____

Proposal is guaranteed for 30 days.

Installation can begin typically six (6) to eight (8) weeks from signed contract being received by GENCOMM™, but is based on availability and cannot be guaranteed.



Owner Acceptance

In accepting this Proposal, Owner agrees to the terms and conditions contained herein including those on the following page. It is understood that they shall prevail over any variation in terms and conditions on any purchase order or other document that the Owner may issue. Any changes in the system requested by the Owner after the execution of this Agreement shall be paid for by the Owner and such changes shall be

authorized in writing. In accepting this Proposal, Owner agrees to the terms and conditions contained herein including those on the reverse side. It is understood that they shall prevail over any variation in terms and conditions on any purchase order or other document that the Owner may issue. Any changes in the system requested by the Owner after the execution of this Agreement shall be paid for by the Owner and such changes shall be authorized in writing.

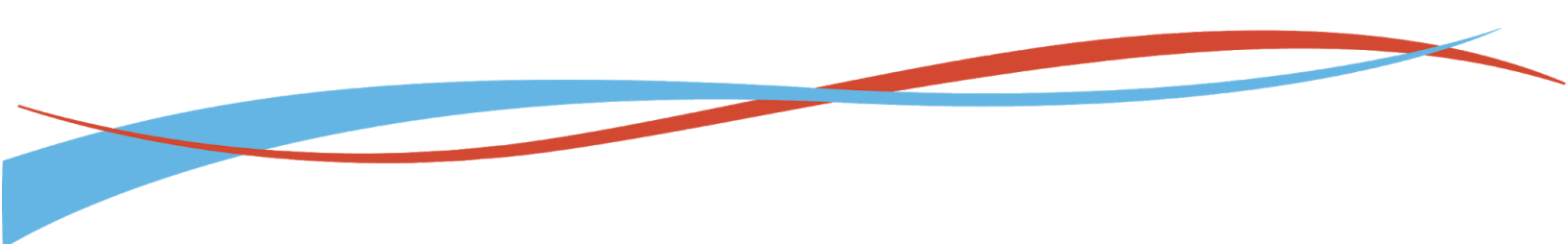
This Agreement is not binding unless approved in writing by an authorized Representative of GENCOMM™. In the event of failure of such approval, the only liability of GENCOMM™ shall be to return to the Owner the amount, if any, paid to GENCOMM™ upon signing of this Agreement.

Owner Signature	Printed Name	Title	Date
GENCOMM BD Signature	Printed Name	Title	Date
GENCOMM Signature	Printed Name	Title	Date

Project and Billing Contact Information

Project Onsite Contact (Scheduling, Access, etc.)	
Name	Phone
E-mail	
Project Address	

Billing Contact	
Name	Phone
E-mail	
Billing Address	



General Provisions

The Contract represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification. The term “Work” means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided by GENCOMM™ to fulfill GENCOMM™’s obligations. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by GENCOMM™.

If requested by GENCOMM™, the Owner shall furnish and pay for a survey and a Legal description of the site. Except for permits and fees which are the responsibility of GENCOMM™ under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges. If GENCOMM™ fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct GENCOMM™ in writing to stop the work until the correction is made. If GENCOMM™ defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, with prejudice to other remedies, correct such deficiencies. In such a case, a Change Order shall be issued deducting the cost of correction from payments due GENCOMM™. GENCOMM™ shall coordinate and cooperate with separate contractors employed by the Owner. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

Execution of the Contract by GENCOMM™ is a representation that GENCOMM™ has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. GENCOMM™ shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, GENCOMM™ shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to GENCOMM™ with the Contract Document; and (3) promptly report errors, inconsistencies or omissions, discovered to the Owner. GENCOMM™ shall supervise and direct the Work, using the GENCOMM™’s best skill and attention. GENCOMM™ shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Unless otherwise provided in the Contract Documents, GENCOMM™ shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work. GENCOMM™ shall deliver, handle, store and install materials in accordance with manufacturer’s instructions. The Owner shall be responsible to provide the following: (1) All electrical requirements for the project including but not limited to conduit, raceway, back boxes, proper ground wire, proper breakers, etc. (2) Core drilling and penetration of concrete (3) Furniture or building modifications to accommodate contracted equipment unless stated in the Contract. GENCOMM™ shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed. GENCOMM™ shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. GENCOMM™ shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner. GENCOMM™ shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The Owner may agree to patch portions of the work as stated in the Contract. GENCOMM™ shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. To the extent permitted by law, GENCOMM™ shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused solely by negligent acts or omissions of GENCOMM™, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. GENCOMM™’s liability shall be limited to actual property damages caused by GENCOMM™. GENCOMM™ shall not be responsible for consequential damages.

After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. A Change Order shall be a written order to GENCOMM™ signed by the Owner to change the Work, Contract Sum or Contract Time. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

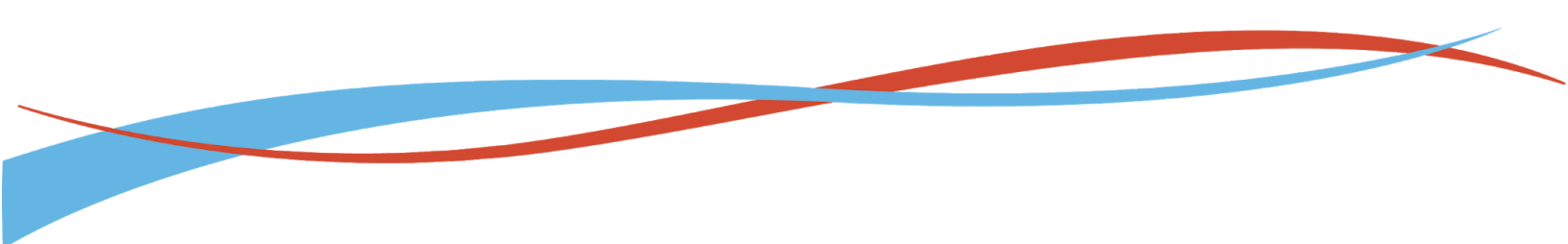
Time limits stated in the Contract Documents are of the essence of the Contract. If GENCOMM™ is delayed at any time in progress of the Work by changes ordered in the Work, or by Labor disputes, strikes, fire, riots, acts of God, unusual delay in deliveries, unavoidable casualties or other causes beyond the GENCOMM™'s control, the Contract Time shall be extended by Change Order for a reasonable time. Owner shall pay for Contract extensions exceeding 90 days. The Owner shall pay schedule compression fees to GENCOMM™ in the event the timeline is accelerated which will include overtime for all personnel associated with the project.

Upon execution of the Contract, the Owner shall make an initial payment of 30% of the Contract Sum. A second payment of 30% will be made upon receipt of the products in our warehouse for this project, (the client is welcome to inspect the material to verify receipt). Afterwards, based on Applications for Payment submitted by GENCOMM™, the Owner shall make progress payments on account of the Contract Sum to GENCOMM™ as provided in the conditions of the Contract as follows: Once each calendar month, the Owner shall make a progress payment to GENCOMM™ on the basis of a duly certified and approved estimate of the Work performed during the preceding calendar month under this Contract; but to insure the proper performance of this Contract, the Owner shall retain five percent (5%) of each estimate until final completion and acceptance of all Work covered by this Contract: provided that the Owner, at any time after fifty percent (50%) of the Work has been completed, finds that satisfactory progress is being made, may make any of the remaining progress payments in full. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to GENCOMM™ thirty (30) days after Substantial Completion of the Work, provided the Work has then been completed, and the Contract fully performed and approved by the Owner. A 1.5% monthly interest charge will be assessed for any payments received after 30 days from date of invoice.

GENCOMM™ warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. GENCOMM™ further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of GENCOMM™'s knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. When the Work or designated portion thereof is substantially complete, the Owner and GENCOMM™ shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and GENCOMM™, and shall fix the time within which GENCOMM™ shall finish all items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work. Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Payment.

GENCOMM™ shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. GENCOMM™ shall promptly remedy damage and loss to property caused by GENCOMM™, or by anyone for whose acts GENCOMM™ may be liable.

Neither party to the Contract shall assign the Contract as a whole without written consent of the other. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of



public authorities having jurisdiction shall be made at an appropriate time. The Owner shall pay for tests except for testing Work found to be defective for which the Contractor shall pay. The Contract shall be governed by the laws of the State of Utah. Intellectual Property. GENCOMM™ owns and retains ownership of all intellectual property, engineering, programming, etc. Any software or system setup written to manage the various systems for the client is owned by GENCOMM™. A conditional use license is granted to the Owner for the equipment installed under this contract. The Client may not backward engineer, copy, or reuse the system design, software, object code, software and other intellectual property created by GENCOMM™.

Software, settings and hardware configuration changes

If owner, owner representative or any other person not authorized by GENCOMM makes changes to software code, settings and/or hardware configuration supplied by GENCOMM, they will assume all responsibility and expenses to restore the software code, settings and/or hardware configuration to specifications outlined in the contract. Any unauthorized changes to software code, settings and/or hardware configuration made will void all warranties outlined in the contract.

The owner shall not solicit, recruit, hire or otherwise employ or retain the employees of the other Party without the prior written consent of the other Party during the term of this Agreement and for two (2) years following the termination or expiration of this Agreement.

If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following seven days' written notice to the Owner, GENCOMM™ may terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit and damages for the entire project.

GENCOMM™ will file a Preliminary Notice (otherwise known as a "Pre Lien") or Mechanic's Lien, as indicated by state where work is carried out, with the Owner, General Contractor or other parties Generally speaking, in order to advise the property owner, and in some states, the owner's general contractor, and construction lender, that GENCOMM™ may have the right to attach a lien to the Owner's property if he or she is not paid for their services. This notice is meant to give the owner an opportunity to insure that GENCOMM™ is paid in full. This is a standard measure, carried out with all contracts to protect the interests of all parties.

If the Owner cancels the Contract prior to the commencement of actual work on the project, the Owner agrees to compensate GENCOMM™ 20% of the value of the contract amount as a cancellation fee to compensate for all work performed in preparation for the project. Any products purchased for the project will be returned to the vendor and all costs associated with return of equipment will be charged to the Client as an additional fee beyond the cancellation fee.

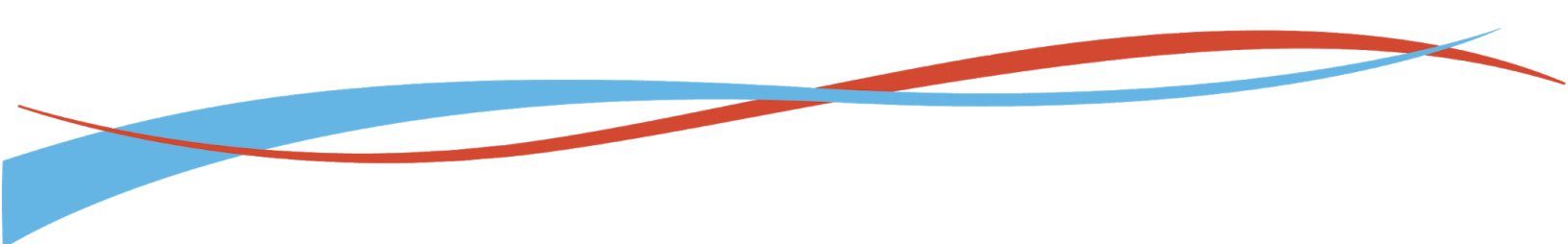
As a condition to this proposal, the Parties agree to execute and accept the terms and conditions of GENCOMM™'s license agreement and the terms of a non-disclosure non-compete as they relate to the work performed on this project.

This Contract falls within the jurisdiction of Salt Lake City, Utah. Any conflict resolution associated with this contract must be held in Salt Lake City, Utah.

If any term or condition of this Contract does not comply with current law, all other terms and conditions remain in full effect and are not voided.

In mutual consideration of the covenants and conditions contained in this Agreement, the Parties additionally agree as follows:
DEFINITIONS.

Confidential Information. "Confidential Information" shall include but not be limited to any facts, opinions, conclusions, projections, data, or trade secrets relating to either Party's work in progress, future work, product marketing, or financial matters transmitted by one Party ("Disclosing Party") to the other Party ("Receiving Party"), in written or other tangible form (including magnetic or optical media), or by oral, visual or other means. If confidential information is disclosed in writing, it must be clearly labeled as "confidential." If it is disclosed orally, the Disclosing Party must summarize the information in writing and confirm that is confidential within 10 days after its oral disclosure to the Receiving Party.



Exceptions to Definition of Confidential Information. Confidential Information as defined in this Agreement shall not include information that:

- (i) was known to the Receiving Party without obligation to keep confidential at the date of disclosure by the Disclosing Party;
- (ii) is after the date of disclosure acquired by the Receiving Party in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such Confidential Information;
- (iii) was, in its entirety and at the time of its disclosure, in the public knowledge or has become public knowledge during the term of this Agreement otherwise than by reason of the Receiving Party's neglect or breach of this Agreement or any other agreement; or
- (iv) is independently developed by the Receiving Party without access to any or all of the Confidential Information.

TERM/TERMINATION/RETURN OF DOCUMENTS.

Term. This Agreement shall begin on the Effective Date and continue in full force and effect for a period of two (2) years on which date this Agreement shall expire and not automatically renew, unless earlier terminated by either Party as set forth herein. Nevertheless, the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement and shall continue for a period of three (3) years.

Termination. Either Party may terminate this Agreement for any reason with five (5) days prior written notice.

Return of Documents. Upon the date of expiration or termination of this Agreement, or at any time during the term of this Agreement upon written request by the Disclosing Party, the Receiving Party shall return or destroy, in the Disclosing Party's sole discretion, all Confidential Information in its possession, including all copies, within five (5) days and provide a written confirmation of the action taken.

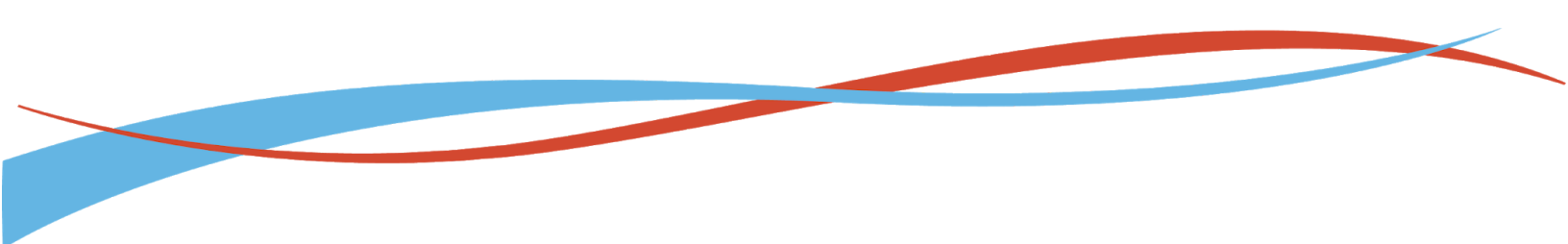
DUTY OF NON DISCLOSURE.

Description of Duty. The Receiving Party shall do the following:

- (i) keep in strict confidence and in safe custody any Confidential Information disclosed to the Receiving Party by the Disclosing Party, exercising the same duty of care used to maintain as confidential the Receiving Party's own Confidential Information and at a minimum a reasonable duty of care;
- (ii) not use or exploit any Confidential Information other than as described herein or as is reasonably necessary for the Purpose;
- (iii) not copy or reproduce any or all of the Confidential Information except as is reasonably necessary for the Purpose;
- (iv) not distribute, disclose or disseminate Confidential Information to anyone except with the prior written consent of the other party; and
- (v) not embody any Confidential Information in other work or otherwise use Confidential Information to develop anything except as provided herein.

Disclosure within Receiving Party. The Receiving Party may only disclose Confidential Information on a need to know basis to its employees.

Disclosure by Law or Regulation. The Receiving Party shall have no such duty to keep Confidential Information where the Receiving Party is required by law, judicial order, the regulations of a government department or agency or other regulatory authority to disclose Confidential Information to a third party, in which event the Receiving Party shall take all reasonable steps to consult and take into account the reasonable requirements of the Disclosing Party in relation to such disclosure. In the event a Secrecy Order pertaining to Confidential Information is issued by the U.S. Patent and Trademark Office, and Confidential Information is disclosed accordingly, the terms of such Secrecy Order shall take precedence over this Agreement. In the event Confidential Information is subject to U.S. export control laws and regulations, Confidential Information shall be disclosed only in compliance with such export laws and regulations.



EXCLUSION OF WARRANTIES/IP INDEMNIFICATION. Neither Party warrants the accuracy or completeness of any Confidential Information. All implied warranties or representations to that effect are hereby excluded. Notwithstanding the foregoing, the Disclosing Party warrants that it possesses sufficient rights to disclose to the Receiving Party as set forth herein any third party intellectual property contained in Confidential Information, and the Disclosing Party shall defend, indemnify and hold harmless the Receiving Party from any claims by third parties of infringement of intellectual property rights or wrongful disclosure arising from use of Confidential Information by the Receiving Party as described herein and as is otherwise reasonably necessary for the Purpose. As a condition to the foregoing indemnity obligations, the indemnified Party (Receiving Party) shall provide the indemnifying Party (Disclosing Party) with prompt notice of any claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying Party (Disclosing Party) in connection with any such claim. The indemnifying Party (Disclosing Party) shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing and at the indemnifying Party's (Disclosing Party's) expense.

NON TRANSFERENCE OF RIGHTS. Nothing in this Agreement shall be construed as transferring any rights, title or license to Confidential Information, except for use of Confidential Information as described herein or as is otherwise reasonably necessary for the Purpose. All Confidential Information shall at all times remain the property or license of the Disclosing Party.

EQUITABLE RELIEF. The Parties acknowledge and agree that Confidential Information, as well as the intellectual property contained therein, is unique and valuable, and that breach of the terms and conditions herein will result in irreparable injury to the Disclosing Party for which monetary damages alone would not be an adequate remedy. In the event of a breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without posting bond. Any such relief shall be in addition to and not in lieu of any monetary damages.

ASSIGNMENT. Neither Party shall assign or otherwise transfer this Agreement or any rights, duties or obligations under this Agreement without the prior written consent of the other Party.

WAIVER. Any delay or failure by either Party to insist upon strict performance of any term or condition or to exercise any right or remedy provided herein shall not be a waiver of such Party's right to demand strict compliance with that term or condition or right or remedy in the future.

NOTICES. Unless otherwise specified herein, all notices, requests, or consents required to be given in writing hereunder shall be transmitted by facsimile, hand delivered, or mailed, first class, postage prepaid, and addressed as indicated in this document, unless either Party notifies the other Party, in writing, of a change in the addressee:

PUBLICITY. Company/Individual shall not make any news release, public announcement, advertisement or publicity concerning anything under this Agreement without the prior written consent of both Parties.

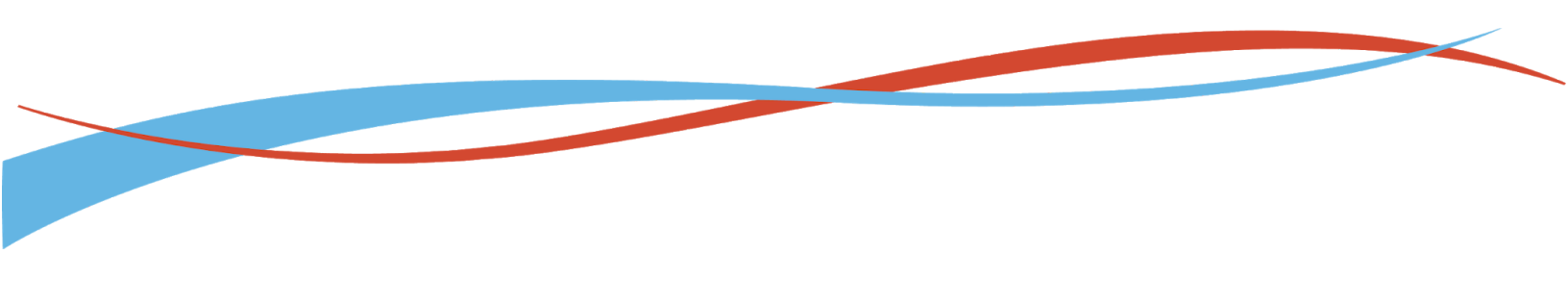
SEVERABILITY. If any term or condition or portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term or condition hereof shall continue with full force and effect.

GOVERNING LAW AND VENUE. This Agreement shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Utah, without reference to the principles of conflict of laws. Suit under this Agreement with the exception of suits brought solely for injunctive relief shall only be brought in a court of competent jurisdiction in the State of Utah.

SOFTWARE LICENSE AGREEMENT

This Software License is made by General Communications, Inc, (GENCOMM™), to the Customer as an essential element of the services to be rendered by GENCOMM™ as defined in the system specification and any associated documents and agreement. *System* shall mean the deliverable product as defined in these documents.

Customer and GENCOMM™ agree that this Software License is deemed to be part of, and subject to, the terms of the Agreement applicable to both parties.



SECTION 1 LICENSE GRANT AND OWNERSHIP

GENCOMM™ hereby grants to Customer a worldwide, perpetual, non-exclusive, non-transferable license to all software for Customer's use in connection with the establishment, use, maintenance and modification of the system implemented by GENCOMM™. *Software* shall mean executable object code of software programs and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software programs necessary for the proper function and operation of the system as delivered by GENCOMM™ and accepted by the Customer.

Except as expressly set forth in this paragraph, GENCOMM™ shall at all times own all intellectual property rights in the software. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the system shall be delivered to Customer for the sole benefit of Customer.

Customer may supply to GENCOMM™ or allow GENCOMM™ to use certain proprietary information, including service marks, logos, graphics, software, documents and business information and plans that have been authored or pre-owned by Customer. All such intellectual property shall remain the exclusive property of Customer and shall not be used by GENCOMM™ for any purposes other than those associated with delivery of the system.

SECTION 2 COPIES, MODIFICATION AND USE

Customer may make copies of the software for archival purposes and as required for modifications to the system. All copies and distribution of the software shall remain within the direct control of customer and its representatives.

Customer may make no modifications to the software. This Software License confers no right in Customer to license, sublicense, sell, or otherwise authorize the use of the software by any third parties, except in connection with the use of the particular system as part of Customer's business.

All express or implied warranties relating to the software shall be deemed null and void in case of any modification to the software made by any party other than GENCOMM™.

SECTION 3 WARRANTIES AND REPRESENTATIONS

GENCOMM™ represents and warrants to Customer that:

It has all necessary rights and authority to execute and deliver this Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Customer.

The goods and services provided by GENCOMM™ under this Software license, including the software and all intellectual property here provided, are original to GENCOMM™ or its subcontractors or partners.

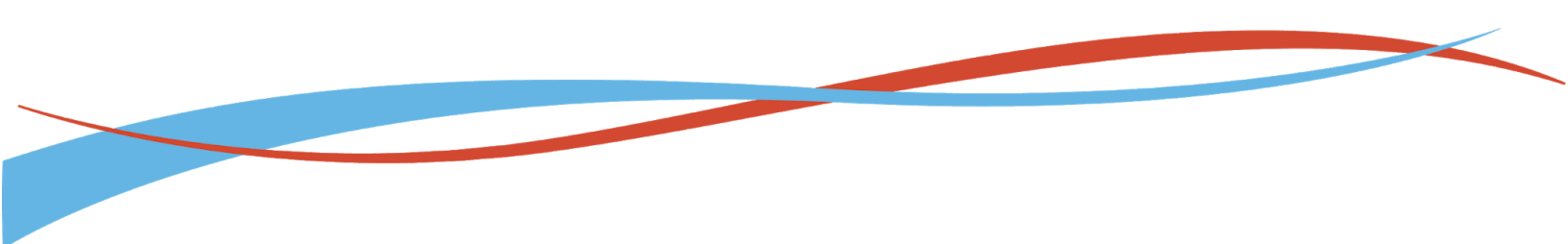
The software, as delivered as part of the system, will not infringe or otherwise violate the rights of any third party, or violate any applicable law, rule or regulation.

Throughout the System Warranty Period, the executable object code of software and the system will perform substantially in accordance with the system specifications and Agreement. If the software fails to perform as specified and accepted all remedies are pursuant to the policies set forth in the Specification and in the Agreement.

Except as expressly stated in this Agreement, there are no warranties, express or implied, including, but not limited to, the implied warranties of fitness for a particular purpose, of merchantability, or warranty of noninfringement of third party intellectual property rights.

SECTION 4 INDEMNIFICATION

GENCOMM™ hereby indemnifies and shall defend and hold harmless Customer, its parent companies and its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against liability, damages, loss, cost or expense, including but not limited to reasonable attorney's fees and expenses, arising out of or in connection with any breach or alleged breach of the Agreement or any third party claims that the software or system here provided by GENCOMM™ infringes or otherwise violates any rights of any such third party.



Customer hereby indemnifies and shall defend and hold harmless GENCOMM™, its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorney's fees and expenses, arising out of or in connection with any third party claims that Customer's use of the software in contravention of the grant of rights infringes or otherwise violates any rights of any such third party.

Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such a claim and shall give the indemnitor reasonable opportunity to defend and to settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate with the indemnitor, shall at all times have the right full to participate in such a defense at its own expense and shall not be obligated, against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.

SECTION 5 TRANSFER AND TERMINATION

This license will automatically terminate upon the disassembly of the system cited above, unless the system is reassembled in its original configuration in another location.

GENCOMM™ may terminate this license upon notice for failure to comply with any of terms set forth in this Software License. Upon termination, Customer is obligated to immediately destroy the software, including all copies and modifications.

ENTIRE AGREEMENT. The foregoing constitutes the entire understanding and agreement between the Parties and shall supersede any prior agreements, written or oral, not incorporated herein. The terms and conditions of this Agreement shall not be amended except by written amendment signed by both Parties.

