

31790

NOISEOFFICE SERVICES AGREEMENT

BETWEEN

BRUEL & KJAER EMS INC.

AND

THE CITY OF LONG BEACH

AND

LONG BEACH AIRPORT

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1 PREAMBLE

This agreement made as of the 18th Day of September 2010 (the “Effective Date”) is between

Brüel & Kjær EMS Inc., a company incorporated under the laws of the State of Delaware relating to companies and having its registered office at 1050 Fulton Ave, Suite 213, Sacramento, CA 95825 (hereinafter called “Supplier”)

and

The City of Long Beach, a municipal corporation of the State of California, (hereinafter called “Customer”)

Subject to the terms and conditions set forth in this Agreement and its schedules and attachments, Supplier and Customer agree that Supplier will provide to Customer the Services described herein:

2 DEFINITIONS

Term	Definition
Agreement	this Noise Office Services Agreement.
Effective Date	the date that this Agreement comes into effect as specified in Clause 1.
Hosted Systems	the Customer equipment and applications listed in the table “System Hosting Services” in Schedule D.3.
NMT	Noise Monitoring Terminal
Prescribed Terms	terms and conditions and warranties implied by law in contracts for the supply of goods or services.
Reference Data	the list of reference information shown Schedule C.6.
Responsible Party	the person(s) or organisation responsible to address a specific issue of fault with the System. This could be a Customer contact or, depending on the scope of the Services, it could be a Supplier contact or a third party contact.
SDM	the Supplier-appointed person assigned to act as a single point of contact for matters relating to the provision of the Services.
Service Fees	the fees specified in Schedule F.
Service Levels	the performance levels defined in Schedule E.
Services	the services provided by Supplier under this Agreement.
Special Clauses	the obligations and liabilities defined in Schedule G.
Specifications	the manuals, system descriptions or other published documentation describing the functionality and performance of the Supplier Hardware, Supplier Software, Subscribed Applications, or Subscribed Data.
Subscribed Applications	the list of applications listed in Schedule C.5.
Subscribed Data	the list of data services listed in Schedule C.4.
Supplier Hardware	Hardware listed in Schedule C.1 as having Brüel & Kjær EMS Inc. as the manufacturer.



Term	Definition
Supplier Software	software listed in Schedule C.3 as having Bruel & Kjaer EMS Inc. as the author.
Supplier Spare Parts	the list of System components shown in Schedule C.2.
Support Request	a request in writing from Customer to Supplier for work to be performed under this Agreement as defined and in the form described in Clause 6.2.
System	the hardware, software, on site spares, subscribed applications and subscribed data listed in Schedule C.
System Component	one of the items comprising the System.
Termination Services	The services described in Schedule F.2.
Third Party Software	software listed in Schedule C.3 as having an author other than Bruel & Kjaer EMS Inc.
User Forum	user group meeting, which Supplier may organize from time to time, to discuss technical issues related to airport noise and the use of Supplier products and services.
Working Day	Monday through Friday inclusive, excluding local public holidays in the main place of business of Customer.
Working Hours	between 8:30am and 5:30pm local time in the main place of business of Customer on any Working Day.

3 TERM, TERMINATION AND RENEWAL

- a This Agreement shall commence on the Effective Date and continue for the initial term specified in Schedule F.1 Contract Term and any extension periods, which may be requested by Customer according to this Clause 3.
- b Customer may extend this Agreement for an additional period by notifying Supplier in writing, no later than 30 days prior to the end of the current term. The length of the extension period and the number of times that the customer may extend this Agreement are as specified in Schedule F.1 Contract Term.
- c If Customer does not advise that it wishes to extend this Agreement as per the above clause then, on written request from Customer, Supplier may continue to provide services on a month-to-month basis for a Service Fee 15% higher than the equivalent fee which applied prior to the end of this Agreement.
- d At the conclusion of this Agreement and providing that a request for the Termination Services is received in writing from Customer at least 30 days prior to the end of this Agreement, Supplier will provide the Termination Services.

4 CONTRACT ADMINISTRATION

- a All correspondence relating to this Agreement should be addressed as defined in Schedule B.

5 SCOPE OF WORK

- a The Services shall be provided according to the applicable Service Levels.
- b The Services apply only to the System. Correct operation of the System may depend on correct operation of other systems (including data feeds, power



supplies, and communication links), which are the responsibilities of Customer. Supplier's obligations under this Agreement shall be excused if, and to the extent that, the System does not work correctly as a result of the failure of these other systems.

- c When Customer becomes aware of an interruption to a system or service which is likely to cause interruption to the System or Services which are the subject of this Agreement, Customer shall notify Supplier where reasonably practical to do so:
 - (i) Seven (7) calendar days in advance of any planned outage; and
 - (ii) Within four (4) Working Hours of an unplanned outage.
- d Supplier's obligations under this Agreement shall be excused if, and to the extent that, Customer fails to perform the obligations listed in Clause 13, below.

6 SERVICE MANAGEMENT

6.1 SERVICE REPORTING:

- a Supplier shall assign an SDM and shall advise Customer of the name of the assigned SDM.
- b Supplier shall provide a quarterly report on the utilization of the Services provided under this Agreement and the performance against the Service Levels.

6.2 SYSTEM SUPPORT

- a Supplier shall provide support in the form of advice by telephone or email in response to a telephone call or email from Customer in relation to the operation of the System.
- b Supplier's telephone/email support services shall operate during Working Hours.
- c Support requests shall be advised to Supplier by email or by fax to the contact details for Customer Support listed in Schedule B:. When advising requests by fax or email, the following information shall be provided:
 - (i) Request title, which will be used as the "Title" of the request for subsequent tracking.
 - (ii) Customer reference number (if any).
 - (iii) Customer contact details, including email address, phone number etc.
 - (iv) The Airport and location of items which are the subject of the request.
 - (v) Date and time of the request.
 - (vi) A description of the request including, as attachments, any screenshots, error logs, etc. as may be useful to assist in Supplier response.
 - (vii) An indication of the urgency or severity of the request; for example; 1= Urgent – Data Loss, 2= Major Loss of Function, 3= Loss of Function, 4= Minor Anomaly, 5=Request for Assistance.
- d Supplier will enter this information into the Supplier's ticket management system and a reply will be sent acknowledging the request and identifying the unique ticket number that is to be used in all future communication concerning this



request.

6.3 CUSTOMER VISITS

- a The SDM or a delegated alternate shall meet with Customer at least as often as specified in Schedule D.1. Such meetings shall be at a location and have an agenda and duration mutually agreed upon and predetermined by Customer and Supplier. Each day of such meetings shall be for a maximum of eight (8) hours per day.

6.4 USER FORUM

- a On request from Customer, Supplier will provide the number of tickets specified in Schedule D.2 each year of this Agreement to any User Forum.
- b Customer shall be responsible for the travel expenses (return coach transportation, lodging etc.) and meals provided as part of the official User Forum activities. Additionally, in lieu of one of the site visits, the Supplier will be responsible for the cost of an additional representative's return coach class air travel, hotel accommodations and group functions hosted by Bruel & Kjaer EMS Inc. All other costs will be the responsibility of the Customer.

7 MAINTENANCE SERVICES

7.1 FAULT MANAGEMENT

- a Supplier will rectify faults in the System during the term of this Agreement and as required to return the System to operating within substantial conformity with the Specifications.
- b If a fault is detected or suspected, Customer shall perform initial fault finding and diagnosis prior to contacting Supplier. Such fault finding and diagnosis may require Customer staff to travel to remote equipment sites to assess local conditions and to reboot/restart equipment as necessary.
- c All faults shall be advised to Supplier by email or by fax to the contact details for Customer Support listed in Schedule B, and in the form described in Clause 6.2 above.
- d Supplier will enter this information into the Supplier's ticket management system and a reply will be sent identifying the unique ticket number that is to be used in all future communication concerning this fault report.
- e Customer shall assist Supplier in diagnosing the fault by, if requested, supplying evidence of the fault such as listings of output, photographs, or other data. Such evidence may also include information about and from equipment other than the System.
- f If requested, Customer shall explain how the fault prevents substantial conformity of the System with the Specifications.
- g Supplier shall carry out remedial work either remotely or on Customer locations at Supplier's discretion and in line with the Service Levels.
- h Supplier will use best efforts to resolve all faults and requests in a fast and efficient manner with a minimum disruption to Customer's operation.



- i Supplier will not be required to carry out remedial work or to carry our remedial work in accordance with the Service Levels if:
 - (i) It has not received a Support Request;
 - (ii) Customer has changed the configuration of the System and this has caused, or contributed to the cause of, the fault;
 - (iii) The fault is caused by incorrect Customer operation of the System or by a failure in consumable equipment.

7.2 SOFTWARE UPGRADES AND PATCHES

- a. Customer shall be entitled, at no additional license fee, to patches and upgrades to the Supplier Software that Supplier shall, from time to time, develop and make available where such patches and upgrades relate to features of the Supplier Software currently supplied and/or licensed to Customer.
- b. Supplier shall notify Customer of upgrades to Supplier Software when they are made available for general distribution. Customer may or may not choose to install the upgrade.
- c. Where an upgrade to Supplier Software requires an upgrade to Third Party Software, Supplier will advise Customer accordingly and will supply, at no additional license fee, the required upgrades to Third Party Software.
- d. The annual service fee payable under this Agreement will not be increased as a result of a decision by Customer to apply an upgrade to the Supplier Software.
- e. Customer acknowledges that the application of an upgrade to Supplier Software or Third Party Software may require engineering effort, additional hardware, travel expenses, or end user training and that, unless specified elsewhere in this Agreement, costs associated with the provision of these items are not included in the scope of this Agreement.
- f. On request from Customer, Supplier shall provide a quotation for the works described in Clause 7.2.e above and the rates applicable for that work shall be as defined in Schedule F.5.
- g. Supplier may declare a particular upgrade or set of upgrades to Supplier Software to be a new general release of the Supplier Software. Supplier reserves the right to cease supporting versions of Supplier Software that are more than two general releases older than the current general release or only to offer such support at increased service fees.
- h. Supplier may provide additional functionality as a new, and separately licensable, module of the Supplier Software, in which case the new module may be offered to Customer as defined in Clause 12.

7.3 HARDWARE REPAIR

- a. The System of hardware requiring physical repair will be repaired by return of the items to Supplier for repair unless explicitly stated otherwise.
- b. Supplier shall determine whether, in order to deliver the Services, it is necessary to return a System Component or part(s) of a System Component.

- c If requested by Supplier, Customer shall securely and safely pack and dispatch such item(s) to the depot nominated by Supplier for repair or replacement and shall pay for freight and insurance to the nominated depot premises.
- d Supplier shall repair or replace the item(s) according to the Service Levels and shall return the item(s) to Customer at Supplier's expense.
- e Unless otherwise specified in this Agreement, Customer shall be responsible for re-installing the item(s) according the instructions from Supplier.

7.4 SPECIFIC EXCLUSIONS

- a The following faults are not included in the scope of this Agreement and will not be rectified by Supplier:
 - (i) Faults in power connections to equipment, except Hosted Systems;
 - (ii) Faults in communications between components of the System, e.g. telephone lines, network connections etc.;
 - (iii) Faults caused by abnormal events e.g. vandalism, lightning strikes, damage outside of Supplier's control.

8 SYSTEM MANAGEMENT SERVICES

8.1 SYSTEM MONITORING

- a Supplier shall monitor the System for abnormal conditions, including incomplete data downloads and out-of-band calibration results, and shall advise the Responsible Party of any detected abnormal conditions.
- b Customer shall advise Supplier of the Responsible Party for various abnormal conditions where Supplier will not be the Responsible Party.

8.2 SYSTEM ADMINISTRATION

- a Supplier shall provide system administration services as defined in, and at the frequency stated in, Schedule D.4 System Administration Services.
- b Supplier may carry out system administration services at any time during the normal business hours of Customer. Supplier may carry out system administration tasks outside of those hours by mutual agreement.

8.3 PERIODIC HARDWARE SERVICES

- a Supplier shall provide hardware services as defined in, and at the frequency stated in, Schedule D.5 Periodic Hardware Services.
- b At the completion of each periodic hardware service, Supplier shall present a report to Customer on the status of the units, and any issues needing to be addressed.

8.4 SUPPLIER SPARES SERVICE

- a Supplier shall provide the Supplier Spare Parts at Supplier's expense, to be located on Customer premises and available to be used in fault rectification as required.
- b Supplier shall inspect the Supplier Spare Parts during visits to Customer site to ensure that they can be utilized when required. Supplier shall repair or replace

any Supplier Spare Parts found to be faulty.

- c On termination of this Agreement, Customer shall return the Supplier Spare Parts.

8.5 SYSTEM HOSTING

- a Supplier shall, in its own facilities, maintain, administer, and operate the Hosted Systems consistent with the applicable Service Levels.
- b Supplier shall report performance against the Service Levels according to Clause 6.1 and shall also make recommendations on any actions or upgrades which might be necessary to improve or secure performance of the Hosted Systems.

9 INFORMATION MANAGEMENT SERVICES

9.1 DATA PROCESSING SERVICES

- a Supplier shall provide data processing services as defined in, and at the frequency stated in, Schedule D.6 Data Processing Services.
- b Supplier will maintain a log of data processing services tasks undertaken and make that log available to Customer as part of regular service reporting.

9.2 REPORT PRODUCTION SERVICES

- a Supplier shall provide report production services as defined in, and at the frequency stated in, Schedule D.7 Report Production Services.

10 SUBSCRIPTION SERVICES

10.1 APPLICATION SUBSCRIPTION

- a Supplier will provide the Subscribed Applications to Customer according to the Specifications and according to the Service Levels.
- b For the term of this Agreement, Customer will have a non-exclusive right to use the Subscribed Applications subject to any limitation on user numbers or locations specified in Schedule C.5 Application Subscriptions.
- c Subscribed Applications remain the exclusive property of Supplier.
- d Customer will not use, or cause others to use, the Subscribed Applications or the information derived from the Subscribed Applications for the real-time control or navigation of aircraft, or for any purpose related to the real-time control or navigation of aircraft.
- e The information contained within the Subscribed Application is a combination of data from a variety of sources, and may include information derived from Customer and from third party sources. Supplier does not warrant the accuracy or availability of the information within the Subscribed Applications.
- f Supplier and Customer agree to abide by the terms of any third party data agreements that are required in order to provide the Subscribed Applications.
- g Due to the highly visual nature of the user interfaces, Subscribed Applications may not be accessible to individuals with certain disabilities. Customer hereby indemnifies Customer against any liability or additional expense arising directly or indirectly from a complaint, allegation or claim by a third party (including employees of the Customer) alleging that a Subscribed Application discriminates

against an individual on the grounds of that individual's disability.

10.2 DATA SUBSCRIPTION

- a Supplier will provide the Subscribed Data to Customer according to the Specifications and according to the Service Levels.
- b For the term of this Agreement, Customer will have a non-exclusive right to use the Subscribed Data subject to any limitation on use specified in Schedule C.4.
- c Subscribed Data remains the exclusive property of Supplier.
- d Customer will not use, or cause others to use, the Subscribed Data or information derived from the Subscribed Data for the real-time control or navigation of aircraft, or for any purpose related to the real-time control or navigation of aircraft.
- e Supplier and Customer agree to abide by the terms of any third party data agreements that are required in order to provide the Subscribed Data.

10.3 REFERENCE DATA

- a Supplier shall provide updates to the Reference Data at the frequency as shown in Schedule C.6.

11 PROFESSIONAL SERVICES

- a No additional services shall be performed unless Supplier provides a written quotation, which is approved in writing by Customer prior to Supplier providing such services.
- b On request from Customer for additional services, Supplier shall provide a quotation for the additional services. Where applicable, the quotation shall be based on the rates shown in Schedule F.5.

12 NEW MODULES

- a Supplier shall notify Customer of new module(s) applicable to the System when they are made available for general distribution along with the applicable additional license fees, installation fees, and/or additional Service Fees applicable to such new module(s).
- b The installation fees and/or any increase in Service Fees applicable to the new module(s) shall, where applicable, be based on the rates shown in Schedule F.5.
- c The new module(s) will only be made available to Customer following Customer's written acceptance of the additional license fees, installation fees, and or additional Service Fees applicable to the new module(s).

13 OBSOLESCENCE

- a Supplier may undertake a review of the System 3 years after the Effective Date and annually thereafter and may recommend the replacement of obsolete customer-owned equipment or customer-owned equipment not meeting specifications. Any such replacement recommendation shall be reasonable and justified.
- b If Customer does not accept the recommendations within 6 months, Supplier may

cease to provide Services for the System or may only offer such support at increased service fees.

14 CUSTOMER OBLIGATIONS

14.1 RECORD KEEPING

- a Customer shall keep accurate records relating to the use and performance of the System as may be requested by Supplier from time to time. At a minimum the records should include Preventive Maintenance Reports, local changes to infrastructure that would affect performance, and repair tickets.
- b Customer shall permit Supplier to inspect these records at any time during Customer's normal business hours. Customer agrees to provide Supplier with a copy of all or any part of these records if so requested.

14.2 COMPLIANCE WITH LICENSE TERMS

- a Customer's use of the System shall, at all times, be consistent with any license terms which apply to the System or any System Component which shall include, without limitation, the standard license terms applicable to the Supplier Software.

14.3 STORAGE OF EQUIPMENT

- a If requested by Supplier, Customer shall provide secure and adequate facilities adjacent to or in reasonable proximity to the System for the storage by Supplier of tools, documentation, and other items necessary to provide the Services.
- b Customer shall provide Supplier with access to such storage facilities at all reasonable times including, but not limited to, all times during Customer's normal business hours.

14.4 PHYSICAL AND ELECTRONIC ACCESS:

- a Customer shall maintain a continuous connection to the internet for the System and capable of establishing a secure virtual private network between the System and Supplier's Operations Centre. Supplier shall assist with information where necessary to establish this link.
- b On request from Supplier and in a timely manner, Customer shall provide all user IDs and passwords to Supplier prior as shall be reasonably required by Supplier to perform the Services.
- c Customer shall provide Supplier's service personnel with full and safe access to the System, and to spare parts storage areas, at all reasonable times for the purpose of providing the services required by this Agreement. Customer shall also provide suitable vehicle parking areas.
- d The access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets and computer network connections to enable Supplier to meet its obligations under this Agreement.
- e Customer shall provide Supplier's service personnel with all information, facilities, services and accessories reasonably required by Supplier to meet its obligations under this Agreement.
- f Customer shall provide, on request, a suitably qualified or informed

representative to accompany Supplier's service personnel and to advise Supplier on access or any other matter within Customer's knowledge or control that will assist Supplier in meeting its obligations under this Agreement.

15 CONFIDENTIALITY

- a Supplier will treat all of Customer's data as confidential and will only use that data for the purpose of meeting its obligations under this Agreement.
- b Supplier will not transfer or disclose any of Customer's data to any other party without the prior written consent of Customer.

16 PAYMENT AND CHARGES

16.1 PAYMENT TERMS

- c Customer shall pay to Supplier the Services Fees plus any applicable value-added-taxes.
- d Invoice shall be issued the first calendar day of each quarterly period in accordance with Schedule F.
- e Payments will be made within 30 calendar days from the receipt by Customer of a correctly rendered, fully detailed, invoice addressed as per Schedule B unless otherwise notified in writing by Supplier; all payments under this Agreement shall be paid in USD to Supplier's bank account as defined in Schedule B.
- f Should Customer fail to make payment within 90 days Supplier may, within 15 Working Days of issuing a written notice, suspend service except if payment is not made for a reason for which Customer may withhold payment hereunder. In the event that service is suspended Customer shall be liable for a re-connection fee equal to the Service Fee for the period during which service was suspended to re-establish the running performance of the System.
- g Customer may withhold or set off the entire payment or part of any payment otherwise due Supplier to such extent as may be necessary, in Customer's reasonable judgement, to reflect:
 - (i) delivery of defective or non-conforming Services by Supplier;
 - (ii) third party claims, which are not covered by the insurance which Supplier is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - (iii) failure of Supplier to pay Subcontractors, or for labour, materials or equipment;
 - (iv) damage to the property of Customer or Customer's agents, employees or contractors, which is not covered by insurance required to be provided by Supplier;
 - (v) failure of Supplier to submit proper invoices with all required attachments and supporting documentation; or
 - (vi) failure of Supplier to comply with any material provision of the Agreement Documents.

17 WARRANTIES

- a Supplier warrants and represents that:
 - (i) Supplier has the professional ability, experience and expertise to perform the Services,
 - (ii) Supplier shall perform the Services hereunder in a good and workmanlike manner, and shall exercise the degree of skill and care required by customarily accepted good practice in accordance with all applicable laws, regulations codes, industry and professional standards, and the terms, conditions and specifications of this Agreement.
 - (iii) Supplier has good and indefeasible title to the Services, Software, Third Party Software, hardware and equipment sold to Customer under this Agreement, that the same are free and clear of all liens, claims, security interests and encumbrances, and that Supplier shall indemnify and hold Customer harmless from and against all adverse title claims related to such title.
 - (iv) The Software and Third Party Software do not infringe on any patent, trademark, copyright, trade secret or other intellectual property right of any kind of any third party, that no adverse claims have been made by any person or entity with respect to the ownership or operation of the Software or Third Party Software, and that Supplier shall defend, indemnify and hold Customer harmless from and against all liability, damages and costs arising out of or resulting from any claim that Customer's use, ownership of, or license rights to, the Software or Third Party Software infringes on the intellectual property rights of any third party.

18 INDEMNIFICATION

- a Supplier's maximum aggregate liability under or in connection with supply of Services under this Agreement whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by Customer in respect of Services under this Agreement and, in respect of Services continuing beyond one year, shall in no event exceed in any year 100% of the total amount payable by Customer in respect of Services in that year.
- b Supplier accepts no responsibility or liability for:
 - (i) any excessive delay by Customer in lodging a Support Request;
 - (ii) any loss or damage to, deterioration of, or faults in, the System to the extent attributable to an act or omission of Customer (including, but not limited to, damage from dropping or incorrect handling of the System Components, electrical damage from power interruptions or spikes to the System and data damage from power interruptions to the System).
- c Neither party shall be liable to the other party for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever



arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in tort (including negligence), contract or otherwise.

- d Nothing in this Agreement shall exclude or limit the Supplier's liability to the extent that the same may not be excluded or limited as a matter of law.
- e Supplier shall indemnify, defend and hold harmless Customer, and its officials, commissioners, employees, and agents ("indemnified parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, expenses or liabilities, of any kind or nature whatsoever ("claims") which may be brought, made, filed against, imposed upon or sustained by the indemnified parties, or any of them alleging:
 - (i) injury to or death of persons or damage to property, including property owned by or under the care and custody of Customer, and
 - (ii) that such injury, death or damages arises from or is attributable to or caused by the breach of this Agreement by Supplier, or the negligence or wilful misconduct of Supplier, its officers, agents or employees, in connection with or pertaining to this Agreement.
- f Notwithstanding the foregoing indemnity, Supplier's maximum aggregate liability for property damage attributable to the Supplier's negligent acts or omissions shall in no event exceed \$5,000,000 and Supplier shall be under no liability to Customer for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill or for any indirect or consequential loss or damage of any kind, SAVE THAT nothing in this Agreement shall exclude or limit Supplier's liability to Customer for fraud, death or personal injury caused by the Supplier's negligence or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- g The indemnity in favour of Customer herein will only apply if:
 - (i) Customer promptly notifies Supplier in writing of the claim;
 - (ii) Customer reasonably cooperates with Supplier in any defence and settlement (at the cost of Supplier); and
 - (iii) Customer grants Supplier sole authority to control any defence and any related settlement.

19 INSURANCE Concurrent with the execution of this Agreement and as a condition precedent, Supplier shall procure and maintain the following insurance at Supplier's sole expense for the duration of this Agreement, including any extensions or renewals, from insurance companies that are authorized to write insurance in the State of California or from excess or surplus lines insurers or insurers that are authorized to transact insurance in the State of California by federal law and that have ratings of or equivalent to A:VIII by A.M. Best Company:

19.1 COMMERCIAL GENERAL LIABILITY INSURANCE

Equivalent in scope to ISO form CG 00 01 11 85 or 10 93 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000)



general aggregate. Such insurance shall not exclude or limit coverage for broad form contractual liability, cross liability protection, independent contractors' liability, or products and completed operations liability. The Customer of Long Beach, its officials, employees, and agents shall be named as additional insured's by endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85, and this coverage shall contain no limitations on the scope of protection afforded to the Customer, its officials, employees, and agents.

19.2 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

Equivalent in scope to CA 00 01 06 92 in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage covering Symbol 1 ("Any Auto").

19.3 COMPLIANCE MONITORING ERRORS AND OMISSIONS LIABILITY INSURANCE

In an amount not less than One Million Dollars (\$1,000,000) per claim and in aggregate covering the services provided pursuant to this Agreement.

19.4 WORKERS' COMPENSATION INSURANCE

As required by the Labor Code of the State of California and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or illness.

19.5 SELF INSURANCE

The Customer acknowledges that the Supplier's insurance program includes a limited self-insurance element. Notwithstanding, The Supplier shall protect the Customer, its officers, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained such self-insurance element.

19.6 CANCELLATION

Each insurance required hereunder shall be separately endorsed to provide that coverage shall not be cancelled, non-renewed, or materially changed in coverage or limits (other than exhaustion of limits by paid claims) except after thirty (30) days prior written notice to Customer ten (10) days prior written notice for cancellation due to non-payment of premium is acceptable).

19.7 PRIMARY


Each insurance required hereunder shall also be separately endorsed to provide that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by the Customer, its officials, employees, or agents.

19.8 SUBCONTRACTORS

Supplier shall require any sub supplier or subcontractor that Supplier may use in the performance of this Agreement to maintain insurance in compliance with the provisions of this section, unless Customer's Risk Manager or designee otherwise agree in writing.

19.9 FORMS

Prior to the commencement of this Agreement, Supplier shall deliver to Customer



certificates of insurance and the endorsements required hereunder for approval as to sufficiency and form, including the certificates of insurance and endorsements of any sub Supplier or subcontractor to Supplier. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Supplier shall, within at least thirty (30) days of expiration of such policies, furnish Customer with certificates of insurance and endorsements evidencing renewal of the insurance required herein, including the insurance of any sub Suppliers and subcontractors to Supplier. Customer reserves the right to require complete certified copies of all said policies at any time, including the policies of any sub Suppliers and subcontractors to Supplier.

19.10 LIMITATIONS

Such insurance as required herein shall not be deemed to limit Supplier's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement.

19.11 ADEQUACY

Customer makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Supplier's liability or obligations under this Agreement.

19.12 MODIFICATIONS

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the Customer's Risk Manager or designee.

20 GENERAL TERMS AND CONDITIONS

20.1 CONTRACT VARIATION PROCEDURES

- a Either Supplier or Customer may propose alterations, additions or omissions to this Agreement.
- b Amendments to the terms and conditions of the Agreement shall be agreed in writing between the parties.
- c Where Customer requires a variation to the Agreement, it shall notify Supplier in writing of the nature of the variation it seeks, and Supplier shall as soon as possible and within 30 days of receipt, forward to Customer a formal Contract Variation Proposal identifying attendant price and schedule variations.
- d Where Supplier requires a variation to the Agreement, it shall notify Customer in writing of the nature of the variation it seeks, and send a formal Contract Variation Proposal identifying attendant price and schedule variations.
- e Contract Variation Proposals shall become effective when formally accepted in writing by duly authorised officers of both Supplier and Customer. Until then, the Agreement shall remain unaltered.
- f Supplier shall not be liable for any additional work undertaken or expenditure incurred by Customer in relation to the variation of this Agreement which has not

been authorised pursuant to this procedure.

- g Agreement to a Contract Variation Proposal shall not be unreasonably withheld by either party.

20.2 NOTICES

- a Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by any other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile transmissions, e-mail, or other commercially accepted means. Notices to Customer and Supplier shall be addressed to the contact persons and at the addresses specified in Schedule B. A party may change its contact persons and notice address by written notice to the other party.
- b A facsimile is taken to be received at the time shown in a transmission report by the machine, which indicates that the whole facsimile was sent.
- c An email is taken to be received at the time shown in a delivery confirmation report generated by the sender's email system.

20.3 RIGHT TO ASSURANCE

- a Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

20.4 TERMINATION

- a Where Customer terminates under this clause, upon the requisite notice being given, Customer shall within 30 days of the termination of this Agreement, return to Supplier any equipment belonging to Supplier that is in Customer's possession, custody or control.

20.5 CUSTOMER DEFAULT

- a Supplier may terminate this Agreement on ten (10) days' prior written notice in writing to Customer if any of the following circumstances arise:
 - (i) Any payment due to Supplier from Customer under this Agreement remains unpaid for a period of ninety (90) days except, if payment is not timely made for a reason for which Customer may withhold payment hereunder;
 - (ii) Customer is in breach of the whole or any material part of this Agreement and this breach is not remedied within thirty [30] days of written notice by Supplier; provided, however, if the breach is curable, but not capable of being cured within thirty (30) days, Supplier may not terminate the Agreement if Customer promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion;

- (iii) Customer disposes of the System;
 - (iv) Customer becomes the subject of any bankruptcy proceedings, becomes insolvent, or enters into receivership;
- b In the event of termination in accordance with this clause Supplier may:
 - (i) Repossess any of its equipment in the possession, control, or custody of Customer;
 - (ii) Retain any money paid;
 - (iii) Charge a reasonable sum for work performed for which no sum has previously been charged;
 - (iv) Be regarded as discharged from any further obligations under this Agreement;
 - (v) Pursue any alternative or additional remedies afforded by the law.
- c Customer shall not be entitled to a refund of any fees paid or accrued prior to the effective date of such termination.
- d Customer shall not be entitled to compensation for loss of earnings or damages.
- e Supplier may suspend service under this Agreement on notice in writing to Customer if any payment due under this Agreement remains unpaid for a period of ninety (90) days except, if payment is not timely made for a reason for which Customer may withhold payment hereunder.
- f In the event of a Customer default, Supplier shall be entitled to charge interest from the due date until the date of payment by Customer.
- g Supplier shall be entitled to a reinstatement fee equal to the amount calculated by multiplying the Annual Maintenance Fee by percentage equal to the number of days in the period from when service is suspended until service is restored divided by 365.

20.6 SUPPLIER DEFAULT

- a Supplier shall be in default under the Agreement if Supplier
 - (i) fails to fully, timely and faithfully perform any of its material obligations under this Agreement,
 - (ii) becomes insolvent or seeks relief in bankruptcy.
- b In the event of a default by Supplier, Customer may terminate the Agreement for cause by written notice to Supplier effective thirty (30) days after the date of such notice unless Supplier, within such thirty (30) day period, cures the default or provides evidence sufficient to prove to Customer's reasonable satisfaction that a default did not occur; provided, however, if the default is curable, but not capable of being cured within thirty (30) days, Customer may not terminate the Agreement if Supplier promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion, but in no event shall the cure exceed ninety (90) days.

20.7 WAIVER

- a No right under this Agreement will be waived by either party except by notice in writing signed by both parties.
- b A waiver by either party will not prejudice its rights in respect of any other breach of this Agreement by the other party.
- c Failure by either party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver by such party of any such provision or in any way affect the validity of the Agreement or any part thereof.

20.8 DISPUTE RESOLUTION

- a If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.
- b Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- c If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; Customer and Supplier agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert.
- d The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session.
- e Customer and Supplier will share the costs of the mediator equally.

20.9 ASSIGNMENT

- a Neither party may assign, sub-license, or sub-contract this Agreement, or any of its rights, obligations or duties hereunder, without the prior written consent of the other party which will not unreasonably withhold such consent.

20.10 ENTIRE AGREEMENT

- a This Agreement constitutes the entire understanding between Supplier and Customer with respect to the subject matter hereof, and supersedes and extinguishes all prior statements, understandings and agreements between the

parties with respect to the subject matter hereof, and all warranties and representations previously given, whether oral, written, or in any other form.

- b Supplier and Customer further agree that neither party places any reliance whatsoever on any representations, agreements, statements or understandings made prior to the Effective Date whether orally, in writing, or any other form, other than those which have been expressly incorporated in this Agreement.
- c No alterations or changes to this Agreement are valid unless they are in writing and signed by both parties in accordance with Clause 20.1.

20.11 FORCE MAJEURE

- a “Force Majeure” shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation, acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labour; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery
- b If, as a result of an event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Agreement:
 - (i) that party is to give the other party prompt notice of the relevant event of force majeure with reasonably full particulars and, in so far as known to it, the probable extent to which it will be unable to perform, or be delayed in performing, the relevant obligations;
 - (ii) the relevant obligations, other than an obligation to pay money, is suspended but only so far as, and for so long as, it is affected by the relevant event of force majeure; and
 - (iii) that party is to use all possible diligence to overcome or remove the relevant event of force majeure as quickly as possible.
- c Nothing in this Agreement shall require the affected party to:
 - (i) settle any strike or other labour dispute on terms contrary to its wishes; or
 - (ii) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- d Supplier may, with Customer’s prior written consent, extend the time for completion of this Agreement and/or the Services.
- e The obligation of the affected party to perform its obligations, resumes as soon as it is no longer affected by the relevant event of force majeure.

20.12 RIGHTS

- a Any express statement of a right of either party under this Agreement is without



prejudice to any other rights of that party either arising in law or expressly stated in this Agreement.

20.13 PRECEDENCE AND SEVERABILITY

- a The Special Clauses are fully incorporated into this Agreement and, in case of any conflict between the Special Clauses and the rest of this Agreement, the provisions of the Special Clauses shall prevail.
- b The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

20.14 GOVERNING LAW

- a The validity, construction and interpretation of this Agreement, and the rights and duties of the parties shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles.

20.15 INDEPENDENT CONTRACTOR

- a Both parties acknowledge that Supplier is an independent contractor and not Customer's employee or agent.

20.16 INTELLECTUAL PROPERTY

- a Customer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, software, source codes and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Customer shall acquire no right, title or interest in or to the same except as expressly stated in this Agreement.
- b The Supplier grants to Customer a revocable, non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for Customer to obtain and utilise the intended benefit of the Services.
- c All data and other information, other than intellectual property described above in whatever form or medium, compiled or prepared by Supplier in performing its services or furnished to Supplier by Customer shall be the property of Customer and Customer shall have the unrestricted right to use or disseminate same without payment of further compensation to Supplier, provided that any future use of such material or work product by Customer for other than the specific purpose intended by the Agreement shall be at Customer's sole risk and without liability to Supplier.
- d Copies of Supplier's work product may be retained by Supplier for its own records.
- e If any claim is made against Customer that the Services infringe the patent, copyright or other intellectual property rights subsisting in the country or countries where Customer is located of any third party, Supplier shall indemnify

Customer against all losses, damages, costs and expenses awarded against, or incurred by, Customer in connection with the claim or paid, or agreed to be paid, by Customer in settlement of the claim provided that:

- (i) Supplier is given full control of any proceedings or negotiations in connection with any such claim; and
- (ii) Customer shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations.

20.17 EMPLOYMENT PRACTICES

- a In connection with performance of the Agreement and subject to federal laws, rules and regulations, Supplier shall not discriminate in employment or in the performance of the Agreement on the basis of race, religion national origin, colour, age, sex, sexual orientation, AIDS, HIV status, handicap or disability.

20.18 ADVERTISING

- a Supplier shall not advertise or publish, without Customer's prior consent, the fact that Customer has entered into the Agreement, except to the extent required by law.

20.19 NO CONTINGENT FEES.

- a Supplier warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by Supplier for the purpose of securing business. For breach or violation of this warranty, Customer shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to Supplier, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

20.20 GRATUITIES

- a Customer may, by written notice to Supplier, cancel this Agreement without liability if it is determined by Customer that gratuities were offered or given by Supplier or any agent or representative of Supplier to any officer, employee, independent contractor, or elected official of Customer with a view toward securing this Agreement or securing favourable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of this Agreement.
- b In the event this Agreement is cancelled by Customer pursuant to this provision, Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Supplier in providing such gratuities.

20.21 INTERPRETATION

- a This Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to



supplement or explain any term used in this Agreement. Although this Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

- b The headings used in this Agreement are for ease of reference only and do not affect its meaning or interpretation.
- c A reference to a person includes a corporation, its successors and permitted assigns.
- d The singular includes the plural and vice versa unless the contrary intention appears.
- e Words importing one gender shall include the other.



21 EXECUTION

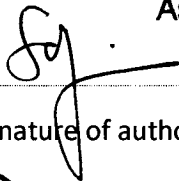
IN WITNESS WHEREOF the parties hereto have executed the Agreement

on the 30th day of August 2010

SIGNED for and on behalf Customer

SIGNED for and on behalf of Supplier

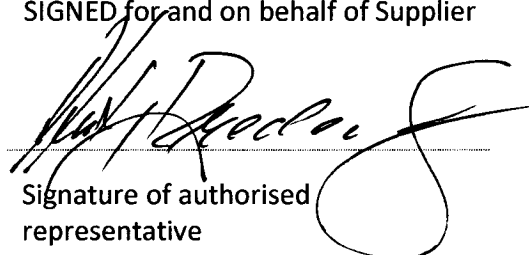
Assistant City Manager



EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Signature of authorised representative

Patrick H. West,
City Manager
Name of authorised representative



Signature of authorised representative

ROBERT BRODEBECK - VP
Name of authorised representative

In the presence of

In the presence of Bobbi L. Gallagher

Theresa Graham, Administrative Officer
Printed name and title

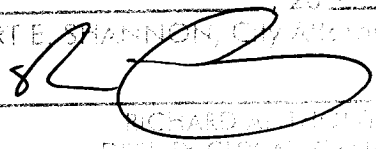
Bobbi L. Gallagher, office mgr.
Printed name and title

APPROVED AS TO FORM

8-11 20 10

ROBERT E. SHANNON, City Attorney

By



RICHARD J. SMITH
DEPUTY CITY ATTORNEY

Schedule A: SUMMARY OF SERVICES PROVIDED

The following table, which summarizes the services to be provided under this agreement, is included to aid understanding of the scope of those services. The Services are defined in the body of this Agreement and in the Schedules and, in the event of conflict between this table and the rest of this Agreement, this rest of this Agreement will take precedence.

Service Line Item	Clause	Status
1. Service Management		
a. Service Reporting	6.1	Included
b. System Support	6.2	Included
c. Site visits	6.3	Included
d. User Forum	6.4	Included
2. Maintenance Services		
a. Software upgrades and patches	7.2	Included
b. Fault management	7.1	Included
c. Hardware Repair	7.3	Included
3. Technology Management Services		
a. System Monitoring	8.1	Included
b. System Administration	8.2	Included
c. Periodic Hardware Service	8.3	Included
d. Supplier Spares	8.4	Not Included
e. System Hosting	8.5	Not Included
4. Information Management Services		
a. Data Processing	9.1	Included
b. Report Publication	9.2	Not Included
5. Subscription Services		
a. Application Subscription	10.1	Included
b. Data Subscription	10.2	Included
c. Reference Data	10.3	Included
6. Professional Services	11	

Schedule B: CONTACTS

Supplier Contacts		
Formal Notices	Name	Vice President
	Address	Brüel & Kjær EMS Inc. 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825
	Telephone	+1 916 265 7709
	Fax	+1 916 265 7719
	email	cms@bksv.com
Routine and operational communications	Name	Service Delivery Manager
	Address	Brüel & Kjær EMS Inc. 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825
	Telephone	+1 916 265 7704
	Fax	+1 916 265 7719
	email	cms@bksv.com
Suppliers Bank Account	Account Name	Brüel & Kjær EMS Inc.
	Account Number	941214-3519
	Bank	Bank of America
	Bank Address	100 Federal St MA DE 10007A Boston, MA, 02102011
Customer Support Centre	Telephone	+1 866 583 0280 +61 3 9508 4930
	Address	69 Kooyong Road Caulfield North Victoria 3161 Australia
	Fax	+61 3 9500 1191
	Email Support Requests	cms@bksv.com
	Customer Contacts	
Formal Notices	Name	Mr. Mario Fabila or contact Noise Officer
	Address	Long Beach Airport 4100 Donald Douglas Drive, Long Beach, CA 90808
	Telephone	562-570-2637
	Fax	562-570-2614
	email	mario.fabila@longbeach.gov
Routine and operational communications	Name	Mr. Mario Fabila or contact Noise Officer
	Address	Long Beach Airport 4100 Donald Douglas Drive, Long Beach, CA 90808
	Telephone	562-570-2637
	Fax	562-570-2614
	email	mario.fabila@longbeach.gov
Address for Invoices	Name	Mr. Mario Fabila or contact Noise Officer
	Address	Long Beach Airport 4100 Donald Douglas Drive, Long Beach, CA 90808
	Telephone	562-570-2637
	Fax	562-570-2614
	email	mario.fabila@longbeach.gov



Schedule C: SYSTEM ELEMENTS

C.1 HARDWARE

Item	Manufacturer	Model	Serial#	Location
ANOMS Server	Dell	Power Edge 2650	TBA	TBA
Rover Server	Dell	Power Edge 2650	TBA	TBA
RMT #1	Brüel & Kjær EMS Inc.	EMU 2100	52042	3553 N Rutgers Ave.
RMT #2	Brüel & Kjær EMS Inc.	EMU 2100	51093	3114 Charlemagne Ave.
RMT #3	Brüel & Kjær EMS Inc.	EMU 2300	42292	6417 E. Anaheim Rd.
RMT #4	Brüel & Kjær EMS Inc.	EMU 2300	78824	2216 Montair Ave.
RMT #5	Brüel & Kjær EMS Inc.	EMU 2100	71042	1390 32 nd St.
RMT#6	Brüel & Kjær EMS Inc.	EMU 2100	78826	3624 Gardenia Ave.
RMT#7	Brüel & Kjær EMS Inc.	EMU 2300	52077	438 E. Home St.
RMT #8	Brüel & Kjær EMS Inc.	EMU 2300	14465	1400 E. Tehachapi Dr
RMT #9	Brüel & Kjær EMS Inc.	EMU 2100	52037	1815 Caragena St.
RMT #10	Brüel & Kjær EMS Inc.	EMU 2100	47269	2850 Fieldler Ave.
RMT #11	Brüel & Kjær EMS Inc.	EMU 2300	46827	2450 Roycroft Ave
RMT #12	Brüel & Kjær EMS Inc.	EMU 2300	52082	1831 #. Marshall Pl.
RMT#13	Brüel & Kjær EMS Inc.	EMU 2300	50193	E Greenmeadow Rd.
RMT#14	Brüel & Kjær EMS Inc.	EMU 2300	52045	33.813840, -118.164712
RMT #15	Brüel & Kjær EMS Inc.	EMU 2300	71039	33.822716, -188.16298
RMT #16	Brüel & Kjær EMS Inc.	EMU 2300	106	33.805304 – 118.162.268
RMT #17	Brüel & Kjær EMS Inc.	EMU 2300	47284	33.805304 - 118135456
RMT #18	Brüel & Kjær EMS Inc.	EMU 2300	60676	4203 Pv Pixie Ave.

C.2 SUPPLIER SPARES PARTS

Type	Description	Manufacturer	Model	Serial#	Location
None					

C.3 SOFTWARE

Item	Author	Licence Number	Users
ANOMS 8	Brüel & Kjær EMS Inc.		4
Windows XP Professional	Microsoft		4
Office 2003 Professional	Microsoft		4
Windows Server 2003	Microsoft		2
MS Interix 2.2.	Microsoft	N/A	4
Oracle 9i	Oracle	TBA	4
Crystal Reports 11	Business Objects	TBA	4

C.4 DATA SUBSCRIPTIONS

Type	Description of Data	Restrictions
Flight Data Feed – SkyTrak	Aircraft position and other information, derived from SkyTrak Passive Radar system, fused and tracked as required, and correlated with plan data.	Data may be used as input to ANOMS and WebTrak applications.



Type	Description of Data	Restrictions
Flight Data Feed - SRG	Aircraft position data derived from interface to radar data, fused and tracked as required, and correlated with plan data and, where possible, SkyTrak Mode S information not available from radar sources.	Data may be used as input to ANOMS and WebTrak applications.

C.5 APPLICATION SUBSCRIPTIONS

Type	Description	Restrictions
WebTrak	Web-based application providing the public and/or other stakeholders with access to noise and track information for historic and near-real-time operations.	Unlimited users

C.6 REFERENCE DATA

Description	Author	Frequency
Map Data	TBA	Annual
FAA Aircraft Register	FAA	Quarterly

Schedule D: SERVICE ELEMENTS

D.1 MANDATORY CUSTOMER SUPPORT VISITS

Number of Visits per Year: 4

D.2 USER FORUM ATTENDEES

Number of included User Forum Attendees per year: 1

D.3 SYSTEM HOSTING SERVICES

Hosted Item	Task Description	Frequency
None		

D.4 SYSTEM ADMINISTRATION SERVICES

Applies To	Task Description	Frequency
ANOMS, and Rover Servers	(i) Apply operating system patches (ii) Apply upgrades and releases to the application software (iii) Install updated Reference Data.	As updates are available and required. Such upgrades to be agreed by Customer in writing in advance.
ANOMS and Rover, Servers	(i) Perform System recovery in the event of a failure	On demand from Customer
ANOMS Servers	(i) Perform Oracle database administration tasks including archiving and tuning as required.	Monthly

D.5 PERIODIC HARDWARE SERVICES

Applies To	Task Description	Frequency
All Installed NMTs	(i) Perform visual inspection for problems / corrosion. (ii) Check operation on site. (iii) Calibration of the unit. (iv) Update of NMT firmware if necessary (v) Download and update of the configuration files (vi) Check of batteries (Note that replacement of NMT batteries is not included as part of this Service) (vii) Replacement of bird spikes and windshields as required (viii) Microphone silica gel desiccant to be replaced at each visit (ix) As part of the preventative maintenance cycle six (6) enforcement sits will have a certified microphone installed annually. The removed microphones will be rotated to other sites to ensure all microphones are certified within a three year period	Annually
All Server and SkyTrak Hardware	(i) Visual inspection and preventative maintenance as suggested by the manufacturer of the hardware	Annually

D.6 DATA PROCESSING SERVICES

Task	Task Description	Frequency
Data Completeness Processing	(i) Check status of downloads from NMTs and re-initiate downloads as necessary. (ii) Check completeness of radar/plan information from overnight processing and re-initiate as necessary. (iii) Re-initiate batch processing as required based on data downloads.	Daily

D.7 REPORT PRODUCTION SERVICES

Task	Task Description	Frequency
None		



Schedule E: SERVICE LEVELS

E.1 SERVICE REQUESTS AND FAULT RESOLUTION

Priority	Description	Response (Working Hrs)	Resolution Time	Target Achievement
1: Major Fault	<ul style="list-style-type: none"> ■ Loss of collection of time perishable data. ■ Faults that may lead to data loss or data corruption. ■ Unable to start the system ■ Loss of unrecoverable data 	4 hours	2 working days, except rebuild of deployed server 5 working days for the rebuild of the deployed server	95% of all tickets to meet target response times 85% of all tickets to meet target resolution times.
2: Major Fault	<ul style="list-style-type: none"> ■ Key function inoperable ■ Noise monitor calibration error 	4 hours	5 days	
3: Minor Fault	<ul style="list-style-type: none"> ■ Reproducible loss of functionality 	2 days	1 month	
4: Minor Fault	<ul style="list-style-type: none"> ■ Minor software issues that do not affect day to day operation of NOMS 	2 days	1 month – fixes agreed within scope of a future software upgrade	
5: Minor Fault	<ul style="list-style-type: none"> ■ Non-reproducible abnormalities 	2 days	Ticket closed within 30 days if abnormality not reproduced	
Request	<ul style="list-style-type: none"> ■ "How do I?" questions. 	1 day	30 days to answer	

Response and resolution times to be determined from the time that Supplier is notified of the request or fault.

E.2 WEBTRAK SUBSCRIBED APPLICATION SERVICE

Area	Service Definition	Measurement (Monthly)	Target Achievement
Availability	Application is available if it can be loaded and the map displayed from a working internet connection which is remote from the data centre where the application is hosted.	Available hours / Expected hours Expected Hours are 24hrs x days per month – Planned Outages). Planned outage must have 7 days notice and be less than 4 hours.	96.0%
Reliability	The number of times application is unavailable in any month.	Number of failures where the application is unavailable for greater than fifteen minutes,	2

E.3 SRG SUBSCRIBED DATA SERVICE

Area	Service Definition	Measurement (Monthly)	Target Achievement
Availability	SRG is available if data is being provided to the target system (e.g. ANOMS, WebTrak)	Available hours / Expected Hours Expected Hours are 24hrs x days per month – Radar Downtime Radar Downtime are the periods when no source data is being provided to SRG from the radar system.	96.0%
Reliability	The number of times data unavailable in any month.	Number of failures where the data is unavailable for greater than fifteen minutes,	1



E.4 SKYTRAK SUBSCRIBED DATA SERVICE

Area	Service Definition	Measurement (Monthly)	Target Achievement
Availability	SkyTrak data service is available if data is being provided to the target system (e.g. ANOMS, WebTrak)	Available hours / Expected Hours Expected Hours are 24hrs x days per month – Radar Downtime Radar Downtime are the periods when no source data is being provided to SkyTrak from the radar system.	96.0%
Reliability	The number of times data unavailable in any month.	Number of failures where the data is unavailable for greater than fifteen minutes,	1



Schedule F: TERM, TERMINATION, AND SERVICE FEES

F.1 CONTRACT TERM

Initial Term: One (1) Year,
 Optional Extension: Twelve (12) Months
 Number of Optional Extensions: Two (2)

F.2 TERMINATION SERVICES

None

F.3 INITIAL SERVICE FEE

Item	Due Date	Quarterly (USD)	Annual (USD)
Service Charges, including SkyTrak but excluding subscriptions listed below	On the effective date and every Quarter thereafter	\$38,206.02	\$152,824.08
SRG Data Subscription	As above	\$5,521.50	\$22,086.00
WebTrak Application Subscription	As above	\$9,638.42	\$38,553.69
Total	As above	\$53,365.94	\$213,463.77

Federal excise taxes, State taxes, or Customer sales taxes will not be included in the invoiced amount providing Customer furnishes a tax exemption certificate upon request.

F.4 SERVICE FEE INCREASES

Supplier shall be entitled to increase the Service Fees one-year after the Effective Date and each year thereafter utilizing the month of July as the reference month. Such variations are to be specified in writing to Customer and shall:

- (i) Not exceed the movement in the weighted average Consumer Price Index for all Urban Consumers – U.S. City Average (CPI-U) of The United States of America for the relevant period as published by the US Department of Labor and currently available on the internet at <http://www.bls.gov/news.release/cpi.t01.htm>.
- (ii) be determined utilizing using a base date of the first day of the month of July and subsequent anniversaries of that date; and
- (iii) be calculated so that Adjusted Service Fee = Existing Service Fee x [1 + CPI-U]
- (iv) in no case shall the Service Fees decrease as a result of a negative CPU-U



F.5 ADDITIONAL SERVICE FEE BASIS

Item	Amount (USD)
Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	175.00 per hour, subject to annual increases as defined in Clause F.4 above.
Third Party Software and hardware costs	At Cost plus 15%
Travel, accommodation, meals, disbursements and other expenses.	At Cost
Additional NMT added to the system	\$675 per quarter to be added to the NoiseOffice Service Fee from the first quarterly invoice following commissioning of the new NMT and subject to annual increases as defined Clause F.4 above.
DLI Data Logger	\$1,463 per quarter to be added to the NoiseOffice Service Fee from the first quarterly invoice following commissioning of the Logger and subject to annual increases as defined Clause F.4 above.
Other new elements added to The System:	Annual Maintenance Fee:
Hardware	12% of Hardware Price
Software	12% of Module Licence Fee



Schedule G: SPECIAL CLAUSES

None

