

**AGREEMENT FOR  
AIRPORT NOISE MONITORING SYSTEM (ANOMS) MAINTENANCE**

**THIS AGREEMENT**, made this 15<sup>th</sup> day of November 2011, by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and Bruel & Kjaer EMS Inc., a Delaware corporation authorized to transact business in the State of Florida, ("Contractor" or "Company"), whose address and phone number are 1050 Fulton Avenue, Suite 213, Sacramento, CA 95821, 916-265-7707, for the term specified herein,

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

**WITNESSETH:**

**I. DOCUMENTS**

The following documents (collectively "Contract Documents") are hereby incorporated into and made part of this agreement:

- (1) Invitation to Bid Number 712-10809, Airport Noise Monitoring System (ANOMS) Maintenance, including any and all addenda, prepared by the City of Fort Lauderdale, ("ITB" or "Exhibit A").
- (2) Revised Noise Office Services Agreement ("Exhibit B")
- (3) The Contractor's response to the ITB, dated June 29, 2011, ("Exhibit C").

All Contract Documents may also be collectively referred to as the "Documents." In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, specific direction from the City Manager (or designee)
- B. Second, this Agreement dated \_\_\_\_\_, 2011, and any attachments.
- C.  Third, Exhibit A
- D.  Fourth, Exhibit B
- E. Fifth, Exhibit C

**II. SCOPE**

The Contractor shall perform the Work under the general direction of the City as set forth in Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all Work identified in this Agreement. The parties agree that the scope of services is a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

### **III. TERM OF AGREEMENT**

The initial contract period shall commence on November 15, 2011, and shall end on November 14, 2012. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

### **IV. COMPENSATION**

The Contractor agrees to provide the services and/or materials as specified in the Contractor's proposal to the City at the cost specified in said proposal and addenda, if any, the proposal and any addenda thereto being attached as Exhibit B. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Contractor to reimburse Contractor's expenses.

### **V. METHOD OF BILLING AND PAYMENT**

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

## VI. GENERAL CONDITIONS

### A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

### B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

### C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

**D. Termination for Convenience**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

**E. Cancellation for Unappropriated Funds**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

**F. Insurance**

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this ITB shall be deemed unacceptable, and shall be considered breach of contract.

**Workers' Compensation and Employers' Liability Insurance**

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes  
Employers' Liability - \$500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made, by the City's Risk Manager, if they are in accordance with Florida Statutes.

**Commercial General Liability Insurance**

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

**Automobile Liability Insurance**

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury	\$250,000 each person, \$500,000 each occurrence
Property damage	\$100,000 each occurrence

**Professional Liability (Errors & Omissions)**

Consultants

Limits: \$2,000,000 per occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale  
Procurement Services Division  
100 N. Andrews Avenue, Room 619  
Ft. Lauderdale, FL 33301

**G. Environmental, Health and Safety**

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable

environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

#### **H. Standard of Care**

Contractor represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

#### **I. Rights in Documents and Work**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

#### **J. Audit Right and Retention of Records**

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's

subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

**K. Public Entity Crime Act**

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

**L. Independent Contractor**

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

**M. Inspection and Non-Waiver**

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**N. Assignment and Performance**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

**O. Conflicts**

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The

limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

**P. Schedule and Delays**

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

**Q. Materiality and Waiver of Breach**

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**R. Compliance With Laws**

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

**S. Severance**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

**T. Limitation of Liability**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

**U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

**V. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

**W. Prior Agreements**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

**X. Payable Interest**

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

**Y. Representation of Authority**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly

authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

**AA. Uncontrollable Circumstances ("Force Majeure")**

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

**BB. Scrutinized Companies**

This Section applies to any contract for goods or services of \$1 million or more:

The Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as provided in section 287.135, Florida Statutes (2011), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2011), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

CITY OF FORT LAUDERDALE

By: [Signature]  
City Manager

Approved as to form:

[Signature]  
Senior Assistant City Attorney

ATTEST:

By: [Signature]  
Print Name: HARRY KIRREAD  
Secretary

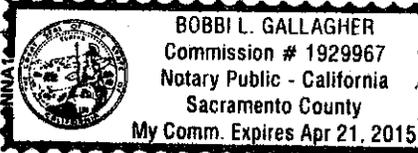
CONTRACTOR

By: [Signature]  
Print Name: ROBERT BRODECKY  
President VICE PRESIDENT

(CORPORATE SEAL)

STATE OF California  
COUNTY OF Sacramento

The foregoing instrument was acknowledged before me this 24 day of January, 2012, by Robert Brodecky as president for Bruel & Kjaer EMS Inc., a Delaware corporation authorized to transact business in the State of Florida.

(SEAL)  [Signature]  
Notary Public, State of California  
(Signature of Notary Public)  
Bobbi L. Gallagher  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X <sup>and</sup> OR Produced Identification X  
Type of Identification Produced HA DL.

EXHIBIT A

City of Fort Lauderdale

Bid 712-10809

**CITY OF FORT LAUDERDALE  
SPECIFICATIONS PACKAGE**

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712-10809

CONTRACT  
COPY

**Airport Noise Monitoring System (ANOMS)  
Maintenance**



CITY OF FORT LAUDERDALE

Richard Ewell

954-828-5138

## Bid 712-10809 Airport Noise Monitoring System (ANOMS) Maintenance

**Bid Number** 712-10809  
**Bid Title** Airport Noise Monitoring System (ANOMS) Maintenance  
  
**Bid Start Date** Jun 22, 2011 3:36:06 PM EDT  
**Bid End Date** Jul 1, 2011 2:00:00 PM EDT  
**Question & Answer End Date** Jun 29, 2011 5:00:00 PM EDT  
  
**Bid Contact** Richard Ewell  
Procurement Specialist II  
Procurement Services  
  
**Contract Duration** 1 year  
**Contract Renewal** 3 annual renewals  
**Prices Good for** 90 days

**Bid Comments** The City of Fort Lauderdale, Florida is seeking bids from qualified bidders to provide calibration and hardware maintenance service for Airport noise monitoring system (ANOMS) maintenance for the City's Business Enterprises Department, in accordance with the terms, conditions, and specifications contained in this Invitation For Bid.

For a copy of the bid, go to [www.bidsync.com](http://www.bidsync.com).

### Item Response Form

**Item** 712-10809--01-01 - System Maintenance  
**Quantity** 1 year  
**Unit Price**   
**Delivery Location** City of Fort Lauderdale  
Fort Lauderdale Executive Airport  
6000 NW 21 Avenue, #200  
Fort Lauderdale FL 33309  
**Qty** 1

**Description**

Calibration and Hardware Maintenance for Airport noise monitoring system (ANOMS), including parts and labor.

**ITB #712-10809****TITLE: Noise Monitoring System (ANOMS) Maintenance****PART I - INFORMATION SPECIAL CONDITIONS****01. PURPOSE**

The City of Fort Lauderdale, Florida (City) is seeking bids from qualified bidders, hereinafter referred to as the Contractor, to provide calibration and hardware maintenance service for Airport noise monitoring system (ANOMS) maintenance for the City's Business Enterprises Department, in accordance with the terms, conditions, and specifications contained in this Invitation For Bid (ITB).

**02. INFORMATION OR CLARIFICATION**

For information concerning technical specifications please utilize the question / answer feature provided by BidSync at [www.bidsync.com](http://www.bidsync.com). Questions of a material nature must be received prior to the cut-off date specified in the solicitation. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum. (See addendum section of BidSync Site). Contractors please note: No part of your bid can be submitted via FAX. No variation in price or conditions shall be permitted based upon a claim of ignorance. Submission of a bid will be considered evidence that the Contractor has familiarized themselves with the nature and extent of the work, and the equipment, materials, and labor required. The entire bid response must be submitted in accordance with all specifications contained in this solicitation.

It is the sole responsibility of the Contractor to ensure that their bid is submitted electronically through BidSync at [www.bidsync.com](http://www.bidsync.com) or reaches the City of Fort Lauderdale City Hall, Procurement Services Department, 6<sup>th</sup> floor, Room 619, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301 in a sealed envelope marked on the outside with the ITB solicitation number and Contractor's name, no later than the time and date specified in this solicitation.

**03. TRANSACTION FEES**

The City of Fort Lauderdale uses BidSync ([www.bidsync.com](http://www.bidsync.com)) to distribute and receive bids and proposals. There is no charge to vendors/contractors to register and participate in the solicitation process, nor will any fees be charged to the awarded contractor.

**05. ELIGIBILITY**

To be eligible for award of a contract in response to this solicitation the Contractor must demonstrate that they have successfully completed services, as specified in the Technical Specifications / Scope of Services section of this solicitation, are normally and routinely engaged in performing such services and are properly and legally licensed to perform such work. In addition, the Contractor must have no conflict of interest with regard to any other work performed by the Contractor for the City of Fort Lauderdale.

**07. BID DOCUMENTS**

The Contractor shall examine this bid carefully. Ignorance of the requirements will not relieve the Contractor from liability and obligation under the Contract.

**08. AWARD**

Award will be made to the responsive and responsible bidder, quoting the lowest price, for that product/service that will best serve the needs of the City of Fort Lauderdale.

The City reserves the right to waive minor variations in the specifications and in the bidding process. The City further reserves the right to accept or reject any and/or all bids and to award or not award a contract based on this bid solicitation.

09. GENERAL CONDITIONS

General Conditions Form G-107 Rev. 11/10 (GC) are included and made a part of this ITB.

10. NEWS RELEASES/PUBLICITY

News releases, publicity releases, or advertisements relating to this contract or the tasks or projects associated with the project shall not be made without prior City approval.

11. CONTRACTORS' COSTS

The City shall not be liable for any costs incurred by proposers in responding to this solicitation.

12. RULES AND SUBMITTALS OF BIDS

The signer of the bid must declare that the only person(s), company or parties interested in the proposal as principals are named therein; that the bid is made without collusion with any other person(s), company or parties submitting a bid; that it is in all respects fair and in good faith, without collusion or fraud; and that the signer of the bid has full authority to bind the principal bidder.

14. MANUFACTURER/BRAND/MODEL SPECIFIC REQUEST

This is a manufacturer/brand/model specification. No substitutions will be allowed.

15. CONTRACT PERIOD

The initial contract term shall commence upon date of award by the City or July 16, 2011, whichever is later, and shall expire one year from that date. The City reserves the right to extend the contract for three additional one year terms, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

In the event services are scheduled to end because of the expiration of this contract, the Contractor shall continue the service upon the request of the City as authorized by the awarding authority. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Contractor shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

16. COST ADJUSTMENTS

Prices quoted shall be firm for the initial contract term (1) year. No cost increases shall be accepted in this initial contract term. Please consider this when providing your pricing for this request for proposal.

Thereafter, any extensions which may be approved by the City shall be subject to the following: Costs for any extension terms shall be subject to an adjustment only if increases or decreases occur in the industry. Such adjustment shall be based on the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Dep't. of Labor, and shall not exceed five percent (5%).

The yearly increase or decrease in the CPI shall be that latest Index published and available for the calendar year ending 12/31, prior to the end of the contract year then in effect, as compared to the index for the comparable month, one-year prior.

Any requested adjustment shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective on the beginning date of the approved contract extension.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the Contract will be considered cancelled on the scheduled expiration date.

**17. SERVICE TEST PERIOD**

If the Contractor has not previously performed the services to the city, the City reserves the right to require a test period to determine if the Contractor can perform in accordance with the requirements of the contract, and to the City's satisfaction. Such test period can be from thirty to ninety days, and will be conducted under all specifications, terms and conditions contained in the contract.

A performance evaluation will be conducted prior to the end of the test period and that evaluation will be the basis for the City's decision to continue with the Contractor or to select another Contractor (if applicable).

**18. CONTRACT COORDINATOR**

The City may designate a Contract Coordinator whose principal duties shall be:

Liaison with Contractor

Coordinate and approve all work under the contract.

Resolve any disputes.

Assure consistency and quality of Contractor's performance.

Schedule and conduct Contractor performance evaluations and document findings.

Review and approve for payment all invoices for work performed or items delivered.

**19. CONTRACTOR PERFORMANCE REVIEWS AND RATINGS.**

The City Contract Coordinator may develop a Contractor performance evaluation report. This report shall be used to periodically review and rate the Contractor's performance under the contract with performance rating as follows:

Excellent	Far exceeds requirements.
Good	Exceeds requirements
Fair	Just meets requirements.
Poor	Does not meet all requirements and contractor is subject to penalty provisions under the contract.
Non-compliance	Either continued poor performance after notice or a performance level that does not meet a significant portion of the requirements. This rating makes the Contractor subject to the default or cancellation for cause provisions of the contract.

The report shall also list all discrepancies found during the review period. The Contractor shall be provided with a copy of the report, and may respond in writing if he takes exception to the report or wishes to comment on the report. Contractor performance reviews and subsequent reports will be used in determining the suitability of the contract extension.

**22. NO EXCLUSIVE CONTRACT/ADDITIONAL SERVICES**

While this contract is for services provided to the department referenced in this Invitation For Bid, the City may require similar work for other City departments. Contractor agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Contractor.

Contractor agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services from another vendor at the City's sole option.

The City may require additional items or services of a similar nature, but not specifically listed in the contract. The Contractor agrees to provide such items or services, and shall provide the City prices on such additional items or services based upon a formula or method, which is the same or similar to that used in establishing the prices in his proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other vendors, or to cancel the contract upon giving the Contractor thirty (30) days written notice.

**23. DELETION OR MODIFICATION OF SERVICES**

The City reserves the right to delete any portion of this Contract at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished on the portion of the Contract to be deleted, the Contractor shall be paid for the deleted portion on the basis of the estimated percentage of completion of such portion.

If the Contractor and the City agree on modifications or revisions to services, after the City has approved work to begin on such services, and a budget has been established for those services, the Contractor will submit a revised budget to the City for approval prior to proceeding with the work.

**25. INSURANCE**

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The City is to be added as an "additional insured" with relation to General Liability Insurance. This MUST be written in the description section of the insurance certificate, even if you have a check-off box on your insurance certificate. Any costs for adding the City as "additional insured" will be at the contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any stipulated insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Department.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that precludes coverage for work contemplated in this ITB shall be deemed unacceptable, and shall be considered breach of contract.

### **Workers' Compensation and Employers' Liability Insurance**

Limits: Workers' Compensation – Per Florida Statute 440  
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at [www.fldfs.com](http://www.fldfs.com).

### **Commercial General Liability Insurance**

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

### **Automobile Liability Insurance**

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury	\$250,000 each person
	\$500,000 each occurrence
Property damage	\$100,000 each occurrence

### **Professional Liability (Errors & Omissions)**

Limits: \$2,000,000 per occurrence

A copy of **ANY** current Certificate of Insurance should be included with your proposal.

In the event that you are the successful bidder, you will be required to provide a certificate naming the City as an "additional insured" for General Liability.

Certificate holder should be addressed as follows:

City of Fort Lauderdale

Procurement Services Department  
100 N. Andrews Avenue, Room 619  
Ft. Lauderdale, FL 33301

26. SUB-CONTRACTORS

If the Contractor proposes to use subcontractors in the course of providing these services to the City, this information shall be a part of the bid response. Such information shall be subject to review, acceptance and approval of the City, prior to any contract award. The City reserves the right to approve or disapprove of any subcontractor candidate in its best interest and to require Contractor to replace subcontractor with one that meets City approval.

Contractor shall ensure that all Contractor's subcontractors perform in accordance with the terms and conditions of this Contract. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend, counsel being subject to the City's approval or disapproval, and indemnify and hold harmless the City and the City's officers, employees, and agents from and against any claim, lawsuit, third-party action, or judgment, including any award of attorney fees and any award of costs, by or in favor of any Contractor's subcontractors for payment for work performed for the City.

27. INSURANCE – SUB-CONTRACTORS

Contractor shall require all of its sub-contractors to provide the aforementioned coverage as well as any other coverage that the contractor may consider necessary, and any deficiency in the coverage or policy limits of said sub-contractors will be the sole responsibility of the contractor.

34. UNCONTROLLABLE CIRCUMSTANCES ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force

Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

35. PUBLIC ENTITY CRIMES

NOTE: Contractor, by submitting a proposal attests they have not been placed on the convicted vendor list.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

36. DAMAGE TO PUBLIC OR PRIVATE PROPERTY

Extreme care shall be taken to safeguard all existing facilities, site amenities, irrigation systems, vehicles, etc. on or around the job site. Damage to public and/or private property shall be the responsibility of the Contractor and shall be repaired and/or replaced at no additional cost to the City.

38. CANADIAN COMPANIES

The City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada, of a judgment entered by a court in the United States of America. All monetary amounts set forth in this Contract are in United States dollars.

39. LOBBYING ACTIVITIES

ALL CONTRACTORS PLEASE NOTE: Any contractor submitting a response to this solicitation must comply, if applicable, with City of Fort Lauderdale Ordinance No. C-00-27 & Resolution No. 07-101, Lobbying Activities. Copies of Ordinance No. C-00-27 and Resolution No. 07-101 may be obtained from the City Clerk's Office on the 7th Floor of City Hall, 100 N. Andrews Avenue, Fort Lauderdale, Florida. The ordinance may also be viewed on the City's website at <http://www.fortlauderdale.gov/clerk/LobbyistDocs/lobbyistord1009.pdf>.

40. BID TABULATIONS/INTENT TO AWARD

Notice of Intent to Award Contract/Bid, resulting from the City's Formal solicitation process, requiring City Commission action, may be found at: [http://www.fortlauderdale.gov/purchasing/notices\\_of\\_intent.htm](http://www.fortlauderdale.gov/purchasing/notices_of_intent.htm). Tabulations of receipt of those parties responding to a formal solicitation may be found at: <http://www.fortlauderdale.gov/purchasing/bidresults.htm>, or any interested party may call the Procurement Services Department at 954-828-5933.

**PART II - TECHNICAL SPECIFICATIONS/SCOPE OF SERVICES****Calibration and Hardware Maintenance  
Service Agreement  
for  
Noise Monitor Terminals (NMT), Types 3543**

The calibration and/or hardware maintenance service agreement providing on-site services for six (6) noise monitor terminals, as part of the Airport Noise & Operations Monitoring System (ANOMS), and all components.

Services consisting of annual and on-site maintenance and calibration of Type 3543, Noise Monitoring Terminals, and typical covered equipment includes, but is not limited to the following:

**Equipment List:**

- 1-BK 4435 Noise Analyzer, as applicable
- 1-BK 4184 Outdoor Microphone Unit
- 1-Rittal SK3113 Temperature Regulator
- 1-Rittal SK3107.110 Enclosure Heater
- 1-Rittal SK3108.110 Axial Fan
- 1-Standard Dialup Modem
- 1-Backup Battery
- 1-Battery Charger
- 1-Isobar 418972 Surge Suppressor for AC Mains
- 1-MGC DLP 4.4 Surge Suppressor for Telephone Lines
- 1-AO0028, 10 meter Microphone Cable
- 1-microphone 4198 / 4184 or calibration exciter diaphragm
- 1-power supplies

**NOTE: includes all optional software and/ or equipment as originally installed and/ or updated.**

**Vendor shall:**

- Provide calibration and on-site hardware maintenance coverage.
- Completely test equipment to operational and performance test procedure
- Provide all parts and labor to repair equipment.
- Provide a detailed service report indicating what services were performed, what troubles/causes were found, what equipment was replaced, and all corrective action taken.
- Provide Telephone assistance and consultation for any and all covered equipment.
- Provide Calibration and Certification of equipment.

**Include a copy of any agreements that will need to be signed with your bid.**

**City of Fort Lauderdale  
GENERAL CONDITIONS**

These instructions are standard for all contracts for commodities or services issued through the City of Fort Lauderdale Procurement Services Department. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB) Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement. In this general conditions document, Invitation to Bid (ITB) and Request for Proposal (RFP) are interchangeable.

**PART I BIDDER PROPOSAL PAGE(S) CONDITIONS:**

- 1.01 BIDDER ADDRESS:** The City maintains automated vendor address lists that have been generated for each specific Commodity Class item through our bid issuing service, BidSync. Notices of Invitations to Bid (ITB'S) are sent by e-mail to the selection of bidders who have fully registered with BidSync or faxed (if applicable) to every vendor on those lists, who may then view the bid documents online. Bidders who have been informed of a bid's availability in any other manner are responsible for registering with BidSync in order to view the bid documents. There is no fee for doing so. If you wish bid notifications be provided to another e-mail address or fax, please contact BidSync. If you wish purchase orders sent to a different address, please so indicate in your bid response. If you wish payments sent to a different address, please so indicate on your invoice.
- 1.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.
- 1.03 PACKING SLIPS:** It will be the responsibility of the awarded Contractor, to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.
- 1.04 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 30 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.
- 1.05 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.
- 1.06 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that the bid and the prices quoted in the bid will be firm for acceptance by the City for a period of ninety (90) days from the date of bid opening unless otherwise stated in the ITB.
- 1.07 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.

By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.

- 1.08 NO BIDS:** If you do not intend to bid please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason, in the space provided in this ITB. Failure to bid or return no bid comments prior to the bid due and opening date and time, indicated in this ITB, may result in your firm being deleted from our Bidder's registration list for the Commodity Class Item requested in this ITB.
- 1.09 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS:** The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity

formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

#### 1.09 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is considered for award, he or she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

#### Part II DEFINITIONS/ORDER OF PRECEDENCE:

**2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:

INVITATION TO BID (ITB) when the City is requesting bids from qualified Bidders.

REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.

BID - a price and terms quote received in response to an ITB.

PROPOSAL - a proposal received in response to an RFP.

BIDDER - Person or firm submitting a Bid.

PROPOSER - Person or firm submitting a Proposal.

RESPONSIVE BIDDER - A person whose bid conforms in all material respects to the terms and conditions included in the ITB.

RESPONSIBLE BIDDER - A person who has the capability in all respects to perform in full the contract requirements, as stated in the ITB, and the integrity and reliability that will assure good faith performance.

FIRST RANKED PROPOSER - That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.

SELLER - Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

CONTRACTOR - Successful Bidder or Proposer who is awarded a Purchase Order, award Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City.

CONTRACT - A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

CONSULTANT - Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

The following terms may be used interchangeably by the City: ITB and/or RFP; Bid or Proposal; Bidder, Proposer, or Seller; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

**2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety.

#### PART III BIDDING AND AWARD PROCEDURES:

**3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidder's should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Any erasures or corrections on the bid must be made in ink and initialed by Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen and ink. Bids shall be signed in ink. Separate bids must be submitted for each ITB issued by the City in separate sealed envelopes properly marked. When a particular ITB or RFP requires multiple copies of bids or proposals they may be included in a single envelope or package properly sealed and identified. Only send bids via facsimile transmission (FAX) if the ITB specifically states that bids sent via FAX will be considered. If such a statement is not included in the ITB, bids sent via FAX will be rejected. Bids will be publicly opened in the Procurement Office, or other designated area, in the presence of Bidders, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.

**3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.

**3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination.

- freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.
- 3.04 TAXES:** The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.
- 3.05 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.
- 3.06 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in the bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in the bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.
- 3.07 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet or exceed these items, and feels that the technical specifications are overly restrictive, the bidder must notify the Procurement Services Department immediately. Such notification must be received by the Procurement Services Department prior to the deadline contained in the ITB, for questions of a material nature, or prior to five (5) days before bid due and open date, whichever occurs first. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.
- 3.08 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle the bidder to any relief from the conditions imposed in the contract.
- 3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.
- 3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion that will most accurately estimate total cost of use and ownership.
- 3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Fort Lauderdale encourages Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.
- 3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.
- 3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Procurement Director reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.
- 3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond or cashiers check. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.
- 3.15 PUBLIC RECORDS:** Florida law provides that municipal records shall at all times be open for personal inspection by any person. Section 119.01, F.S., the Public Records Law. Information and materials received by City in connection with an ITB response shall be deemed to be public records subject to public inspection upon award, recommendation for award, or 10 days after bid opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. If the Proposer believes any of the information contained in his or her response is exempt from the Public Records Law, then the Proposer, must in his or her response, specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.
- 3.16 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder

and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.

- 3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

- 3.18 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.
- 3.19 BID PROTEST PROCEDURE: ANY PROPOSER OR BIDDER WHO IS NOT RECOMMENDED FOR AWARD OF A CONTRACT AND WHO ALLEGES A FAILURE BY THE CITY TO FOLLOW THE CITY'S PROCUREMENT ORDINANCE OR ANY APPLICABLE LAW MAY PROTEST TO THE DIRECTOR OF PROCUREMENT SERVICES DEPARTMENT (DIRECTOR), BY DELIVERING A LETTER OF PROTEST TO THE DIRECTOR WITHIN FIVE (5) DAYS AFTER A NOTICE OF INTENT TO AWARD IS POSTED ON THE CITY'S WEB SITE AT THE FOLLOWING LINK:**  
[http://www.fortlauderdale.gov/purchasing/notices\\_of\\_intent.htm](http://www.fortlauderdale.gov/purchasing/notices_of_intent.htm)

**THE COMPLETE PROTEST ORDINANCE MAY BE FOUND ON THE CITY'S WEB SITE AT THE FOLLOWING LINK:**  
<http://www.fortlauderdale.gov/purchasing/protestordinance.pdf>

#### PART IV BONDS AND INSURANCE

- 4.01 PERFORMANCE BOND:** If a performance bond is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

- 4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Procurement Services Department original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance, and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting the bid, agrees to abide by such modifications.

#### PART V PURCHASE ORDER AND CONTRACT TERMS:

- 5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:
- Bidders name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
  - All City Departments being advised to refrain from doing business with the Bidder.
  - All other remedies in law or equity.
- 5.02 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of

- any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.
- 5.03 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this order must be accompanied by a completed Material Safety Data Sheet (MSDS).
- 5.04 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB the bidder will supply only material or equipment that is 100% asbestos free.
- 5.05 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, the bidder may, if the bidder has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.
- 5.06 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.
- 5.07 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.
- 5.08 INDEMNITY/HOLD HARMLESS AGREEMENT:** The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Fort Lauderdale and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorneys fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.
- 5.09 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.
- 5.10 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.
- 5.11 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
- 5.12 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The Contractor agrees to make available to the City's Internal Auditor, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later.
- 5.13 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at their own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this contract.
- 5.14 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.
- 5.15 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this contract.
- 5.16 UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party of the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be

insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve themselves of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

- 5.17 ELIGIBILITY:** If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.
- 5.18 PATENTS AND ROYALTIES:** The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.
- 5.19 ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original award approval.
- 5.20 LITIGATION VENUE:** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida.

**NON-COLLUSION STATEMENT:**

By signing this offer, the vendor/contractor certifies that this offer is made independently and free from collusion. Vendor shall disclose below any City of Fort Lauderdale, FL officer or employee, or any relative of any such officer or employee who is an officer or director of, or has a material interest in, the vendor's business, who is in a position to influence this procurement.

Any City of Fort Lauderdale, FL officer or employee who has any input into the writing of specifications or requirements, solicitation of offers, decision to award, evaluation of offers, or any other activity pertinent to this procurement is presumed, for purposes hereof, to be in a position to influence this procurement.

For purposes hereof, a person has a material interest if they directly or indirectly own more than 5 percent of the total assets or capital stock of any business entity, or if they otherwise stand to personally gain if the contract is awarded to this vendor.

In accordance with City of Fort Lauderdale, FL Policy and Standards Manual, 6.10.8.3,

3.3. City employees may not contract with the City through any corporation or business entity in which they or their immediate family members hold a controlling financial interest (e.g. ownership of five (5) percent or more).

3.4. Immediate family members (spouse, parents and children) are also prohibited from contracting with the City subject to the same general rules.

**Failure of a vendor to disclose any relationship described herein shall be reason for debarment in accordance with the provisions of the City Procurement Code.**

**NAME**

**RELATIONSHIPS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**In the event the vendor does not indicate any names, the City shall interpret this to mean that the vendor has indicated that no such relationships exist.**

**BID/PROPOSAL SIGNATURE PAGE**

**How to submit bids/proposals:** It is preferred that bids/proposals be submitted electronically at [www.bidsync.com](http://www.bidsync.com), unless otherwise stated in the bid packet. If mailing a hard copy, it will be the sole responsibility of the Bidder to ensure that the bid reaches the City of Fort Lauderdale, City Hall, Procurement Department, Suite 619, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, prior to the bid opening date and time listed. Bids/proposals submitted by fax or email will NOT be accepted.

The below signed hereby agrees to furnish the following article(s) or services at the price(s) and terms stated subject to all instructions, conditions, specifications addenda, legal advertisement, and conditions contained in the bid. I have read all attachments including the specifications and fully understand what is required. By submitting this signed proposal I will accept a contract if approved by the CITY and such acceptance covers all terms, conditions, and specifications of this bid/proposal.

**Please Note:** If responding to this solicitation through BidSync, the electronic version of the bid response will prevail, unless a paper version is clearly marked **by the bidder** in some manner to indicate that it will supplant the electronic version. All fields below **must** be completed. If the field does not apply to you, please note N/A in that field.

Submitted by:  (Authorized signature)  (date)

Name (printed)  Title:

Company: (Legal Registration)

**CONTRACTOR, IF FOREIGN CORPORATION, MAY BE REQUIRED TO OBTAIN A CERTIFICATE OF AUTHORITY FROM THE DEPARTMENT OF STATE, IN ACCORDANCE WITH FLORIDA STATUTE §607.1501 (visit <http://www.dos.state.fl.us/>).**

Address:

City  State  Zip

Telephone No.  FAX No.  Email:

Delivery: Calendar days after receipt of Purchase Order (section 1.02 of General Conditions):

Payment Terms (section 1.04):  Total Bid Discount (section 1.05):

Does your firm qualify for MBE or WBE status (section 1.09): MBE  WBE

**ADDENDUM ACKNOWLEDGEMENT** - Proposer acknowledges that the following addenda have been received and are included in the proposal:

Addendum No.	Date Issued

P-CARDS: Will your firm accept the City's Credit Card as payment for goods/services?

YES

NO

**VARIANCES:** State any variations to specifications, terms and conditions in the space provided below or reference in the space provided below all variances contained on other pages of bid, attachments or bid pages. No variations or exceptions by the Proposer will be deemed to be part of the bid submitted unless such variation or exception is listed and contained within the bid documents and referenced in the space provided below. If no statement is contained in the below space, it is hereby implied that your bid/proposal complies with the full scope of this solicitation. HAVE YOU STATED ANY VARIANCES OR EXCEPTIONS BELOW? BIDDER MUST CLICK THE EXCEPTION LINK IF ANY VARIATION OR EXCEPTION IS TAKEN TO THE SPECIFICATIONS, TERMS AND CONDITIONS. If this section does not apply to your bid, simply mark N/A in the section below.

Variances:   
revised 6-16-11

## **Question and Answers for Bid #712-10809 - Airport Noise Monitoring System (ANOMS) Maintenance**

### **OVERALL BID QUESTIONS**

#### **Question 1**

The bid is titled Airport Noise Monitoring System (ANOMS) Maintenance and the bid's technical specifications indicate Noise Monitoring Terminals (NMT). Is this bid to maintain Noise Monitoring Terminals that are integrated with a ANOMS system. (Submitted: Jun 23, 2011 9:13:40 AM EDT)

#### **Answer**

- Yes, the bid is for the maintenance and calibration of Noise Monitoring Terminals (NMTs) integrated with an Airport Noise & Operations Monitoring System (ANOMS). (Answered: Jun 23, 2011 9:14:01 AM EDT)

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**NOISEOFFICE SERVICES AGREEMENT**

**BETWEEN**

**BRUEL & KJAER EMS INC.**

**AND**

**THE CITY OF FORT LAUDERDALE**

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**TABLE OF CONTENTS**

<b><u>1</u></b>	<b><u>PREAMBLE</u></b>	<b><u>5</u></b>
<b><u>2</u></b>	<b><u>DEFINITIONS</u></b>	<b><u>5</u></b>
<b><u>3</u></b>	<b><u>TERM, TERMINATION AND RENEWAL</u></b>	<b><u>6</u></b>
<b><u>4</u></b>	<b><u>CONTRACT ADMINISTRATION</u></b>	<b><u>6</u></b>
<b><u>5</u></b>	<b><u>SCOPE OF WORK</u></b>	<b><u>6</u></b>
<b><u>6</u></b>	<b><u>SERVICE MANAGEMENT</u></b>	<b><u>7</u></b>
6.1	Service Reporting.....	7
6.2	System Support.....	7
6.3	Customer Visits.....	7
6.4	User Forum.....	8
<b><u>7</u></b>	<b><u>MAINTENANCE SERVICES</u></b>	<b><u>8</u></b>
7.1	Fault Management.....	8
7.2	Software Upgrades and Patches.....	9
7.3	Hardware Repair.....	9
7.4	Specific Exclusions.....	10
<b><u>8</u></b>	<b><u>SYSTEM MANAGEMENT SERVICES</u></b>	<b><u>10</u></b>
8.1	System Monitoring.....	10
8.2	System Administration.....	10
8.3	Periodic Hardware Services.....	10
8.4	Supplier Spares Service.....	10
8.5	System Hosting.....	11
<b><u>9</u></b>	<b><u>INFORMATION MANAGEMENT SERVICES</u></b>	<b><u>11</u></b>
9.1	Data Processing Services.....	11
9.2	Report Production Services.....	11
<b><u>10</u></b>	<b><u>SUBSCRIPTION SERVICES</u></b>	<b><u>11</u></b>
10.1	Application Subscription.....	11
10.2	Data Subscription.....	12
10.3	Reference Data.....	12
<b><u>11</u></b>	<b><u>PROFESSIONAL SERVICES</u></b>	<b><u>12</u></b>
<b><u>12</u></b>	<b><u>NEW MODULES</u></b>	<b><u>12</u></b>
<b><u>13</u></b>	<b><u>OBSOLESCENCE</u></b>	<b><u>12</u></b>
<b><u>14</u></b>	<b><u>CUSTOMER OBLIGATIONS</u></b>	<b><u>13</u></b>
14.1	Record Keeping.....	13
14.2	Storage of Equipment.....	13
14.3	Physical and Electronic Access.....	13
<b><u>15</u></b>	<b><u>CONFIDENTIALITY</u></b>	<b><u>13</u></b>
<b><u>16</u></b>	<b><u>PAYMENT AND CHARGES</u></b>	<b><u>14</u></b>
16.1	Payment Terms.....	14
<b><u>17</u></b>	<b><u>WARRANTIES</u></b>	<b><u>14</u></b>
<b><u>18</u></b>	<b><u>LIMITATION OF LIABILITY AND INDEMNITIES</u></b>	<b><u>15</u></b>

19.1	Contract Variation Procedures .....	16
19.2	Notices .....	17
19.3	Right to Assurance. ....	17
19.4	Termination .....	17
19.5	Customer Default.....	17
19.6	Supplier Default.....	18
19.7	Waiver.....	19
19.8	Dispute resolution .....	19
19.9	Assignment; SUBCONTRACTING .....	20
19.10	Entire Agreement.....	20
19.11	Force Majeure.....	20
19.12	Rights .....	21
19.13	Precedence and Severability .....	21
19.14	Governing Law.....	21
19.15	Independent Contractor.....	22
19.16	Intellectual Property .....	22
19.17	Employment Practices.....	22
19.18	Advertising. ....	23
19.19	No Contingent Fees.....	23
19.20	Gratuities.....	23
19.21	Interpretation.....	23
<b>20</b>	<b>EXECUTION</b> .....	<b>25</b>
<b>SCHEDULE A: SUMMARY OF SERVICES PROVIDED</b> .....		<b>27</b>
<b>SCHEDULE B: CONTACTS</b> .....		<b>28</b>
<b>SCHEDULE C: SYSTEM ELEMENTS</b> .....		<b>29</b>
C.1	Hardware.....	29
C.2	Supplier Spares Parts .....	29
C.3	Software.....	29
C.4	Data Subscriptions .....	29
C.5	Application Subscriptions.....	29
C.6	Reference Data .....	29
<b>SCHEDULE D: SERVICE ELEMENTS</b> .....		<b>30</b>
D.1	Mandatory Customer Support Visits.....	30
D.2	User Forum Attendees .....	30
D.3	System Hosting Services .....	30
D.4	System Administration Services .....	30
D.5	Periodic Hardware Services .....	30
D.6	Data Processing Services .....	30
D.7	Report Production Services .....	30
<b>SCHEDULE E: SERVICE LEVELS</b> .....		<b>31</b>
E.1	Service Requests and Fault Resolution .....	31
E.2	WebTrak Subscribed Application Service .....	31
E.3	SRG Subscribed Data Service .....	31
E.4	SkyTrak Subscribed Data Service .....	31
<b>SCHEDULE F: TERM, TERMINATION, AND SERVICE FEES</b> .....		<b>32</b>

---

<b>F.1</b>	<b>Contract Term.....</b>	<b>32</b>
<b>F.2</b>	<b>Initial Service Fee.....</b>	<b>32</b>
<b>F.3</b>	<b>Service Fee Increases .....</b>	<b>32</b>
<b>F.4</b>	<b>Additional Service Fee Basis .....</b>	<b>33</b>
<b>SCHEDULE G:</b>	<b>SPECIAL CLAUSES</b>	<b>34</b>

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**1 PREAMBLE**

This agreement made as of the 16 Day of July, 2011 (the "Effective Date") is between

**BRUEL & KJAER EMS INC.**, a Delaware corporation authorized to transact business in the State of Florida, (hereinafter called "Supplier")

and

**The City of Fort Lauderdale**, a municipal corporation duly organized and existing under the laws of the State of Florida and (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**

<b>Agreement</b>	this Noise Office Services Agreement.
<b>Effective Date</b>	the date that this Agreement comes into effect as specified in Clause 1.
<b>Hosted Systems</b>	the Customer equipment and applications listed in the table "System Hosting Services" in Schedule D.3.
<b>NMT</b>	Noise Monitoring Terminal
<b>Prescribed Terms</b>	terms and conditions and warranties implied by law in contracts for the supply of goods or services.
<b>Reference Data</b>	the list of reference information shown Schedule C.6
<b>Responsible Party</b>	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.
<b>SDM</b>	Service Delivery Manager, the Supplier-appointed person assigned to act as a single point of contact for matters relating to the provision of the Services.
<b>Service Fees</b>	the fees specified in Schedule F:
<b>Service Levels</b>	the performance levels defined in Schedule E:
<b>Services</b>	the services provided by Supplier under this Agreement.
<b>Special Clauses</b>	the obligations and liabilities defined in Schedule G:
<b>Specifications</b>	the manuals, system descriptions or other published documentation describing the functionality and performance of the Supplier Hardware, Supplier Software, Subscribed Applications, or Subscribed Data.
<b>Subscribed Applications</b>	the list of applications listed in Schedule C.5.
<b>Subscribed Data</b>	the list of data services listed in Schedule C.4
<b>Supplier Software</b>	software listed in Schedule C.3 as having Brüel & Kjær as the author.
<b>Supplier Spare Parts</b>	the list of System components shown in Schedule C.2

<b>Support Request</b>	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
<b>System</b>	the hardware, software, on site spares, subscribed applications and subscribed data listed in Schedule C:
<b>System Component</b>	one of the Items comprising the System.
<b>Termination Services</b>	The services described in Schedule F.
<b>Third Party Software</b>	software listed in Schedule C.3 as having an author other than Brüel & Kjær.
<b>User Forum</b>	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.
<b>Working Day</b>	Monday through Friday inclusive, excluding local public holidays in the main place of business of Customer.
<b>Working Hours</b>	between 8:00am and 5:00pm 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 the 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 the 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 deliver the obligations listed in Clause 14, 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.

### **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 agreed upon

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**

- b** 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.
- c** Customer shall be responsible for the travel expenses (transportation, lodging etc.) and meal expenses (except for meals provided as part of the official User Forum activities) of its attendees at User Forums.

### **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** To the extent practical, 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;

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: . Any travel shall be subject to the Customer's prior written authorization and in accordance with the Customer's Travel Allowance and subsistence Policy.
- 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 Nothing in this Clause 7.2 shall imply that Customer is entitled to any software except the Supplier Software and Third Party Software. In particular, 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 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 specified by Supplier for repair or replacement and shall

- 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:.

**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: .
- 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 three years after the effective date of this Agreement 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

this agreement, whereupon Supplier shall refund to Customer any unearned fees that have been paid, 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.
- 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 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.

### **14.3 PHYSICAL AND ELECTRONIC ACCESS:**

- a Customer shall maintain a continuous connection to the Internet for the System and be 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 reasonably timely manner, Customer shall provide all user IDs and passwords to Supplier as shall be reasonably required by Supplier to perform the Services.
- c Customer shall provide Supplier's service personnel with full and non-hazardous 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.
- d The access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets, and computer network connections, no greater than those provided Customer's employees, 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 Except as otherwise provided by Florida law, Supplier will treat all of Customer's

obligations under this Agreement.

- b Except as otherwise provided by Florida law, 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**

- a Customer shall pay to Supplier the Services Fees.
- b Invoice shall be issued the first calendar day of each quarterly period in accordance with Schedule F:
- c 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:.
- d 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.
- e 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 judgment, 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, labor, 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, ordinances, 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 LIMITATION OF LIABILITY AND INDEMNITIES

- a Supplier's maximum aggregate liability under or in connection with supply of Services under this Agreement arising in contract shall in no event exceed 100% of the total amount payable by Customer in respect of Services 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 unreasonable 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 Any lawsuit arising out of or in connection with this Agreement ~~must~~ be commenced against Supplier within the time prescribed by Florida Statute 11.01.

Supplier shall have no liability to Customer under or in connection with any claim commenced after such time.

- e 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.
- f Supplier shall indemnify, defend and hold harmless Customer, and Customer's officials, commissioners, employees, and agents ("indemnified parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, penalties, fines, 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, Supplier's officers, agents or employees.
- g 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, property damage, 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.
- h The indemnity in favour of Customer herein will only apply if:
  - (i) Customer reasonably 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 defense and any related settlement, except that counsel that Supplier provides for Customer shall be subject to Customer's approval or disapproval.

## **19 GENERAL TERMS AND CONDITIONS**

### **19.1 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 <sup>agree</sup> as

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 authorized 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 authorized pursuant to this procedure.

#### **19.2 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.

#### **19.3 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 a default.

#### **19.4 TERMINATION**

- a Where Customer terminates, 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.

#### **19.5 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 named debtor in any bankruptcy proceedings, becomes insolvent, or enters into receivership;
- b In the event of termination in accordance with this clause Supplier may:
- (i) Take possession of any of its equipment in the possession, control, or custody of Customer;
  - (ii) Retain any money paid, except any that is unearned;
  - (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, except that Supplier shall refund to Customer any money paid that is unearned.
- 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 in accordance with the Florida Local Government Prompt Payment Act.
- 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.

#### 19.6 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 the Agreement; or

- (ii) becomes insolvent or seeks relief in bankruptcy or is the subject of an involuntary petition 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.

#### **19.7 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.

#### **19.8 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 except, in the case of Customer, a decision regarding the dispute requires action by Customer's city commission. 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 certified as such by the Florida Supreme Court 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.
- d The parties agree to participate in mediation in Broward County, Florida, in good faith for up to thirty (30) calendar days from the date of the first mediation

- e Customer and Supplier will share the costs of the mediator equally.

**19.9 ASSIGNMENT; SUBCONTRACTING**

- a Neither party may assign, sublicense, or subcontract this Agreement, or any of its rights, obligations or duties hereunder, without the prior written consent of the other party.
- b In the event Supplier engages any subcontractor in the performance of this Agreement, Supplier shall ensure that all of Supplier's subcontractors perform in accordance with the terms and conditions of this Agreement. Supplier shall be fully responsible for all of Supplier's subcontractors' performance, and liable for any of Supplier's subcontractors' non-performance and all of Supplier's subcontractors' acts and omissions. Supplier shall defend at Supplier's expense, counsel being subject to Customer's approval or disapproval, and indemnify and hold Customer and Customer's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Supplier's subcontractors for payment for work performed for Customer by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Supplier's subcontractors or by any of Supplier's subcontractors' officers, agents, or employees. Supplier's use of subcontractors in connection with this Agreement shall be subject to Customer's prior written approval, which approval Customer may revoke at any time.

**19.10 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 19.1.

**19.11 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 labor disputes; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; interruptions by government or court orders; present or future orders of any regulatory body

having proper jurisdiction and authority; and explosions.

- 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, including 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 labor 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.

#### **19.12 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.

#### **19.13 PRECEDENCE AND SEVERABILITY**

- a The Special Clauses, if any, 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.

#### **19.14 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 Florida without regard to its conflict of laws principles. Venue for any lawsuit by one party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

**19.15 INDEPENDENT CONTRACTOR**

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

**19.16 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 license to use such of the Works as are necessary, and to the extent necessary, for Customer to obtain and utilize 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 defend, counsel being subject to Customer's approval, and 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 or in satisfaction of any judgment 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.

**19.17 EMPLOYMENT PRACTICES**

- a In connection with performance of the Agreement and subject to federal and Florida 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, marital status, AIDS, HIV status, handicap or disability.

**19.18 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.

**19.19 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.

**19.20 GRATUITIES.**

- a Customer may, by written notice to Supplier, cancel the 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 the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement.
- b In the event the 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.

**19.21 INTERPRETATION.**

- a The 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 shall be relevant to supplement or explain any term used in the Agreement. Although the 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.

**20 EXECUTION**

IN WITNESS WHEREOF the parties hereto have executed the Agreement as follows:

**CUSTOMER**  
CITY OF FORT LAUDERDALE

\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

ATTEST:

\_\_\_\_\_  
Lee R. Feldman, City Manager

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

Approved as to form:

\_\_\_\_\_ Senior  
Assistant City Attorney

WITNESSES:

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

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

(Corporate Seal)

STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ :

**SUPPLIER**  
BRUEL & KJAER EMS INC.

By: \_\_\_\_\_

Print Name:

Title:

(If not an officer, please attach proof of authorization.)

ATTEST:

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

Title:

---

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ as \_\_\_\_\_ for BRUEL & KJAER EMS INC., a Delaware corporation authorized to transact business in the State of Florida.

(Seal)

\_\_\_\_\_  
(Signature of Notary Public – State of \_\_\_\_\_)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**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. The clauses shown in the following table as "not included" are deleted from this agreement.

Service Line Item	Clause	Status
<b>a. Service Reporting</b>	<b>6.1</b>	<b>Included</b>
<b>b. System Support</b>	<b>6.2</b>	<b>Included</b>
<b>c. Site visits</b>	<b>6.3</b>	<b>Not Included</b>
<b>d. User Forum</b>	<b>6.4</b>	<b>Not Included</b>
<b>a. Software upgrades and patches</b>	<b>7.2</b>	<b>Included</b>
<b>b. Fault management</b>	<b>7.1</b>	<b>Included</b>
<b>c. Hardware Repair</b>	<b>7.3</b>	<b>Included</b>
<b>a. System Monitoring</b>	<b>8.1</b>	<b>Not Included</b>
<b>b. System Administration</b>	<b>8.2</b>	<b>Not Included</b>
<b>c. Periodic Hardware Service</b>	<b>8.3</b>	<b>Included</b>
<b>d. Supplier Spares</b>	<b>8.4</b>	<b>Not Included</b>
<b>e. System Hosting</b>	<b>8.5</b>	<b>Not Included</b>
<b>a. Data Processing</b>	<b>9.1</b>	<b>Included</b>
<b>b. Report Publication</b>	<b>9.2</b>	<b>Not Included</b>
<b>a. Application Subscription</b>	<b>10.1</b>	<b>Not Included</b>
<b>b. Data Subscription</b>	<b>10.2</b>	<b>Not Included</b>
<b>c. Reference Data</b>	<b>10.3</b>	<b>Not Included</b>

## Schedule B:CONTACTS

Formal Notices	Name Address Telephone Fax eMail	Vice President Brüel & Kjær EMS Inc. + 1 916 265 7709 + 1,916 265 7719 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Routine and operational communications	Name Address  Telephone Fax eMail	Service Delivery Manager Brüel & Kjaer EMS Inc. 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825 + 1,916 265 7705 + 1 916 265 7719 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Supplier's Bank Account	Account Name Account Number Bank Bank Address	Brüel & Kjaer EMS Inc 921258885 JPMorgan Chase Bank N.A Chicago, IL (No Street Address needed) Routing Number 071000013
Customer Support Centre	Telephone  Address  Fax Email Support Requests	+1 866 583 0280 +61 3 9508 4930 69 Kooyong Road Caulfield North Victoria 3161 Australia +61 3 9500 1191 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Formal Notices	Name  Address Telephone Fax eMail	Airport Manager Clara Bennett 6000 NW 21 Avenue, Fort Lauderdale, FL 33309 954-828-4955 954-938-4974 <a href="mailto:cbennett@fortlauderdale.gov">cbennett@fortlauderdale.gov</a>
Routine and operational communications	Name  Address Telephone Fax eMail	Noise Abatement Officer Florence Straugh 6000 NW 21 Avenue, Fort Lauderdale, FL 33309 954-828-4955 954-938-4974 <a href="mailto:fstraugh@fortlauderdale.gov">fstraugh@fortlauderdale.gov</a>
Address for Invoices	Name Address Telephone Fax eMail	Accounts Payable 100 N Andrews Ave, Fort Lauderdale, FL 33301 954-828-5173 <a href="mailto:AcctsPayable@Fortlauderdale.gov">AcctsPayable@Fortlauderdale.gov</a>

**Schedule C: SYSTEM ELEMENTS**

**C.1 HARDWARE**

1	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543
2	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543
3	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543
4	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543
5	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543
6	Noise Terminal w/ BK4435 and 4184 Microphone	Brüel & Kjær	BK3543

**C.2 SUPPLIER SPARES PARTS**

None
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**C.3 SOFTWARE**

None
------

**C.4 DATA SUBSCRIPTIONS**

None
------

**C.5 APPLICATION SUBSCRIPTIONS**

None
------

**C.6 REFERENCE DATA**

None
------

**Schedule D: SERVICE ELEMENTS**

**D.1 MANDATORY CUSTOMER SUPPORT VISITS**

Number of Visits per Year: 0

**D.2 USER FORUM ATTENDEES**

Number of included User Forum Attendees per year: 0

**D.3 SYSTEM HOSTING SERVICES**

None	
------	--

**D.4 SYSTEM ADMINISTRATION SERVICES**

None	
------	--

**D.5 PERIODIC HARDWARE SERVICES**

All Installed NMTs	(i)	Perform visual inspection for problems / corrosion.	Annual
	(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	

**D.6 DATA PROCESSING SERVICES**

Data Completeness Processing	(i)	Check status of downloads from NMTs and re-initiate downloads as necessary.	Daily
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**D.7 REPORT PRODUCTION SERVICES**

None	
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## Schedule E: SERVICE LEVELS

### E.1 SERVICE REQUESTS AND FAULT RESOLUTION

Request	Description	Response Time	Resolution Time	Resolution Goal
1: Major Fault	<ul style="list-style-type: none"> <li>■ Loss of collection of time perishable data.</li> <li>■ Faults that may lead to data loss or data corruption.</li> <li>■ Unable to start the system</li> <li>■ Loss of unrecoverable data</li> </ul>	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"> <li>■ Key function inoperable</li> <li>■ Noise monitor calibration error</li> </ul>	4 hours	5 days	
3: Minor Fault	<ul style="list-style-type: none"> <li>■ Reproducible loss of functionality</li> </ul>	2 days	1 month	
4: Minor Fault	<ul style="list-style-type: none"> <li>■ Minor software issues that do not affect day to day operation of NOMS</li> </ul>	2 days	1 month – fixes agreed within scope of a future software upgrade	
5: Minor Fault	<ul style="list-style-type: none"> <li>■ Non-reproducible abnormalities</li> </ul>	2 days	Ticket closed within 30 days if abnormality not reproduced	
Request	<ul style="list-style-type: none"> <li>■ "How do I?" questions.</li> </ul>	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

Request	Description	Response Time	Resolution Time	Resolution Goal
None				

### E.3 SRG SUBSCRIBED DATA SERVICE

Request	Description	Response Time	Resolution Time	Resolution Goal
None				

### E.4 SKYTRAK SUBSCRIBED DATA SERVICE

Request	Description	Response Time	Resolution Time	Resolution Goal
None				

## Schedule F: TERM, TERMINATION, AND SERVICE FEES

### F.1 CONTRACT TERM

Initial Term: One Year (1)  
Optional Extension: One-year Renewal  
Number of Optional Extensions: Three (3) One-year Renewals

Termination Services:

None

### F.2 INITIAL SERVICE FEE

Year 1 Service Fee	Pre-paid quarterly on the acceptance date	\$ 3,962.50	\$15,850.00
Year 2 Service Fee (Optional)	On the first anniversary of acceptance and every quarter thereafter	\$ 4,081.38 *	\$ 16,325.50*
Year 3 Service Fee (Optional)	On the second anniversary of acceptance and every quarter thereafter	\$ 4,203.82 *	\$ 16,815.27 *
Year 4 Service Fee (Optional)	On the third anniversary of acceptance and every quarter thereafter	\$ 4,329.93 *	\$ 17,319.73 *

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.

\*3% Increase has been included for budgeting purposes only. CPI will be applied accordingly per clause F.4.

### F.3 SERVICE FEE INCREASES

Supplier shall be entitled to increase the Service Fees one-year after the Effective Date and each year thereafter on the anniversary of the Effective Date. 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>. { Refer to local regions CPI requirements}
- (ii) be determined utilizing using a base date of the first day of the month of the Effective Date and subsequent anniversaries of that date; and
- (iii) be calculated so that Adjusted Service Fee = Existing Service Fee x [1 + CPI-U]

#### F.4 ADDITIONAL SERVICE FEE BASIS

Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	175.00 per hour, such fee subject to annual increases as defined in Clause F.3
Third Party Software and hardware costs	At Cost plus 15%
Travel, accommodation, meals, disbursements and other expenses.	In accordance with Customer's Travel Allowance and Subsistence Policy
New Modules added to The System:	Annual Maintenance Fee:
Hardware	12% of Hardware Price
Software	12% of Module License Fee
Calibration of NMT	\$1200 per NMT, such fee subject to annual increases as defined in Clause F.3

**Schedule G: SPECIAL CLAUSES**

None

**Bruel & Kjaer EMS Inc**

Bid Contact **Robert Brodeacky**  
**robert.brodecky@bksv.com**  
**Ph 916-265-7707**

Address **1050 Fulton Avenue**  
**Suite 213**  
**Sacramento, CA 95821**

Item #	Line Item	Notes	Unit Price	Qty/Unit	Total Price	Attch.	Docs
712-10809--01-01	System Maintenance	<b>Supplier Product Code:</b>	<b>First Offer - \$15,850.00</b>	1 / year	<b>\$15,850.00</b>	<b>Y</b>	<b>Y</b>

Supplier Total **\$15,850.00**

**Bruel & Kjaer EMS Inc**  
Item: **System Maintenance**

**Attachments**

FXE RFP Response July 1, 2011.PDF



July 1, 2011

Mr. Richard Ewell  
Fort Lauderdale Executive Airport  
6000 N.W. 21<sup>st</sup> Avenue, #200  
Fort Lauderdale, FL 33309

**RE: Airport Noise Monitoring System (ANOMS) Maintenance**

Dear Mr. Ewell,

In response to your Request for Proposal published June 22, 2011, please find attached our complete response package for the provision of Services for Noise Monitoring Terminals Maintenance. Brüel & Kjær is the existing provider for Fort Lauderdale Executive Airports Airport Noise & Operations Monitoring System (ANOMS), and as such we are proposing to incorporate the NMT Noise Office Service agreement to the existing ANOMS Maintenance Agreement.

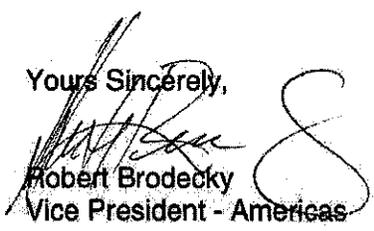
Brüel & Kjær is the only company which has the capability and resources to successfully deliver services that address your stated requirements in the Specifications Package. Brüel & Kjær is the world leader in Airport Noise and Flight Tracking Solutions. We have services established in more than 250 airports, ranging from small general aviation airports to the world's largest hubs.

In addition to the key service deliverable, we have paid particular attention to ensuring all our customers have helpdesk support and 24/7 system health monitoring. In whole, the Brüel & Kjær solution is the only solution, ensuring Fort Lauderdale Executive Airport receives the most reliable, technically advanced and scalable services on the market today, with promise for the next 20 years.

As we move forward in the selection process, have confidence that The City of Fort Lauderdale's satisfaction is of the utmost importance to Brüel & Kjær. We appreciate the invitation to respond to The City of Fort Lauderdale's Airport Noise Services for the Noise Monitoring Terminals Maintenance and look forward to continuing to work closely with the Airport continuing our world-class leading solutions.

Please do not hesitate to contact me for additional information, clarification or to discuss other options to best meet the business needs of Fort Lauderdale Executive Airport.

Yours Sincerely,

  
Robert Brodecky  
Vice President - Americas

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**NOISEOFFICE SERVICES AGREEMENT**

**BETWEEN**

**BRÜEL AND KJÆR EMS INC**

**AND**

**THE CITY OF FORT LAUDERDALE**

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**TABLE OF CONTENTS**

<b><u>1</u></b>	<b><u>PREAMBLE</u></b>	<b><u>7</u></b>
<b><u>2</u></b>	<b><u>DEFINITIONS</u></b>	<b><u>7</u></b>
<b><u>3</u></b>	<b><u>TERM, TERMINATION AND RENEWAL</u></b>	<b><u>9</u></b>
<b><u>4</u></b>	<b><u>CONTRACT ADMINISTRATION</u></b>	<b><u>10</u></b>
<b><u>5</u></b>	<b><u>SCOPE OF WORK</u></b>	<b><u>10</u></b>
<b><u>6</u></b>	<b><u>SERVICE MANAGEMENT</u></b>	<b><u>11</u></b>
6.1	Service Reporting.....	11
6.2	System Support .....	11
6.3	Customer Visits.....	12
6.4	User Forum.....	12
<b><u>7</u></b>	<b><u>MAINTENANCE SERVICES</u></b>	<b><u>13</u></b>
7.1	Fault Management.....	13
7.2	Software Upgrades and Patches.....	14
7.3	Hardware Repair.....	15
7.4	Specific Exclusions .....	16
<b><u>8</u></b>	<b><u>SYSTEM MANAGEMENT SERVICES</u></b>	<b><u>16</u></b>
8.1	System Monitoring .....	16
8.2	System Administration.....	17
8.3	Periodic Hardware Services.....	17
8.4	Supplier Spares Service.....	17
8.5	System Hosting.....	18
<b><u>9</u></b>	<b><u>INFORMATION MANAGEMENT SERVICES</u></b>	<b><u>18</u></b>
9.1	Data Processing Services.....	18
9.2	Report Production Services .....	18
<b><u>10</u></b>	<b><u>SUBSCRIPTION SERVICES</u></b>	<b><u>18</u></b>
10.1	Application Subscription.....	18
10.2	Data Subscription .....	19
10.3	Reference Data.....	20
<b><u>11</u></b>	<b><u>PROFESSIONAL SERVICES</u></b>	<b><u>20</u></b>
<b><u>12</u></b>	<b><u>NEW MODULES</u></b>	<b><u>20</u></b>
<b><u>13</u></b>	<b><u>OBSOLESCENCE</u></b>	<b><u>21</u></b>
<b><u>14</u></b>	<b><u>CUSTOMER OBLIGATIONS</u></b>	<b><u>21</u></b>
14.1	Record Keeping.....	21
14.2	Compliance with License terms.....	22
14.3	Storage of Equipment .....	22
14.4	Physical and Electronic Access:.....	22
<b><u>15</u></b>	<b><u>CONFIDENTIALITY</u></b>	<b><u>23</u></b>
<b><u>16</u></b>	<b><u>PAYMENT AND CHARGES</u></b>	<b><u>24</u></b>
16.1	Payment Terms.....	24
<b><u>17</u></b>	<b><u>WARRANTIES</u></b>	<b><u>25</u></b>
<b><u>18</u></b>	<b><u>LIMITATION OF LIABILITY AND INDEMNITIES</u></b>	<b><u>26</u></b>

<b>19</b>	<b>GENERAL TERMS AND CONDITIONS</b>	<b>28</b>
19.1	Contract Variation Procedures	28
19.2	Notices	29
19.3	Right to Assurance	30
19.4	Termination	30
19.5	Customer Default	30
19.6	Supplier Default	32
19.7	Waiver	33
19.8	Dispute resolution	33
19.9	Assignment; SUBCONTRACTING	34
19.10	Entire Agreement	35
19.11	Force Majeure	36
19.12	Rights	37
19.13	Precedence and Severability	37
19.14	Governing Law	37
19.15	Independent Contractor	38
19.16	Intellectual Property	38
19.17	Employment Practices	39
19.18	Advertising	40
19.19	No Contingent Fees	40
19.20	Gratuities	40
19.21	Interpretation	41
<b>20</b>	<b>EXECUTION</b>	<b>42</b>
<b>SCHEDULE A: SUMMARY OF SERVICES PROVIDED</b>		<b>45</b>
<b>SCHEDULE B: CONTACTS</b>		<b>47</b>
<b>SCHEDULE C: SYSTEM ELEMENTS</b>		<b>49</b>
C.1	Hardware	49
C.2	Supplier Spares Parts	49
C.3	Software	49
C.4	Data Subscriptions	50
C.5	Application Subscriptions	50
C.6	Reference Data	50
<b>SCHEDULE D: SERVICE ELEMENTS</b>		<b>51</b>
D.1	Mandatory Customer Support Visits	51
D.2	User Forum Attendees	51
D.3	System Hosting Services	51
D.4	System Administration Services	51
D.5	Periodic Hardware Services	51
D.6	Data Processing Services	52
D.7	Report Production Services	52
<b>SCHEDULE E: SERVICE LEVELS</b>		<b>53</b>
E.1	Service Requests and Fault Resolution	53
E.2	WebTrak Subscribed Application Service	54
E.3	SRG Subscribed Data Service	54
E.4	SkyTrak Subscribed Data Service	54

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<b>SCHEDULE F:</b>	<b>TERM, TERMINATION, AND SERVICE FEES</b>	<b>55</b>
F.1	Contract Term.....	55
F.2	Initial Service Fee.....	55
F.3	Service Fee Increases.....	56
F.4	Additional Service Fee Basis.....	57
<b>SCHEDULE G:</b>	<b>SPECIAL CLAUSES</b>	<b>58</b>

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**1 PREAMBLE**

This agreement made as of the 16 Day of July, 2011 (the "Effective Date") is between

**Brüel and Kjær EMS Inc**, a Delaware corporation authorized to transact business in the State of Florida, (hereinafter called "Supplier")

and

**The City of Fort Lauderdale**, a municipal corporation duly organized and existing under the laws of the State of Florida and (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	Service Delivery Manager, 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 Software	software listed in Schedule C.3 as having Brüel and Kjær as the author.
Supplier Spare Parts	the list of System components shown in Schedule C.2

Term	Definition
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.
Third Party Software	software listed in Schedule C.3 as having an author other than Brüel and Kjær.
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 8:00am and 5:00pm 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 the 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 the 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 deliver 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.

### **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

- b 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.
- c Customer shall be responsible for the travel expenses (transportation, lodging etc.) and meal expenses (except for meals provided as part of the official User Forum activities) of its attendees at User Forums.

### 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 To the extent practical, 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: . Any travel shall be subject to the Customer's prior written authorization and in accordance with the Customer's Travel Allowance and subsistence Policy.
- 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 Nothing in this Clause 7.2 shall imply that Customer is entitled to any software except the Supplier Software and Third Party Software. In particular, 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 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 specified by Supplier for repair or replacement and shall pay for freight and insurance to the specified 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.

## 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.
- 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 three years after the effective date of this Agreement 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, in which case Customer may terminate

this agreement, whereupon Supplier shall refund to Customer any unearned fees that have been paid, 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.
- 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 license terms applicable to the Supplier Software to which Customer agrees.

##### **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 be 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 reasonably timely manner, Customer shall provide all user IDs and passwords to Supplier as shall be reasonably required by Supplier to perform the Services.
- c Customer shall provide Supplier's service personnel with full and non-hazardous 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.
- d The access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets, and computer network connections, no greater than those provided Customer's employees, 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 Except as otherwise provided by Florida law, 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 Except as otherwise provided by Florida law, 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

- a Customer shall pay to Supplier the Services Fees.
- b Invoice shall be issued the first calendar day of each quarterly period in accordance with Schedule F:
- c 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:
- d 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.
- e 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 judgment, 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 labor, 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, ordinances, 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 LIMITATION OF LIABILITY AND INDEMNITIES

- a Supplier's maximum aggregate liability under or in connection with supply of Services under this Agreement arising in contract shall in no event exceed 100% of the total amount payable by Customer in respect of Services 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 unreasonable 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 Any lawsuit arising out of or in connection with this Agreement must be commenced against Supplier within the time prescribed by Florida law, and Supplier shall have no liability to Customer under or in connection with any claim commenced after such time.
- e 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.
- f Supplier shall indemnify, defend and hold harmless Customer, and Customer's officials, commissioners, employees, and agents ("indemnified parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, penalties, fines, 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, Supplier's officers, agents or employees.
- g 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, property damage, 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.
- h The indemnity in favour of Customer herein will only apply if:
  - (i) Customer reasonably 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 defense and any related settlement, except that counsel that Supplier provides for Customer shall be subject to Customer's approval or disapproval.

## **19 GENERAL TERMS AND CONDITIONS**

### **19.1 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 authorized 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 authorized pursuant to this procedure.

#### 19.2 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.

#### 19.3 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.

#### 19.4 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.

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**19.5 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 named debtor in any bankruptcy proceedings, becomes insolvent, or enters into receivership;
- b. In the event of termination in accordance with this clause Supplier may:
- (i) Take possession of any of its equipment in the possession, control, or custody of Customer;
  - (ii) Retain any money paid, except any that is unearned;
  - (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, except that Supplier shall refund to Customer any money paid that is unearned.
- 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 in accordance with the Florida Local Government Prompt Payment Act.
- 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.

**19.6 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 the Agreement; or
  - (ii) becomes insolvent or seeks relief in bankruptcy or is the subject of an involuntary petition 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.

**19.7 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.

**19.8 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 except, in the case of Customer, a decision regarding the dispute requires action by Customer's city commission. 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 certified as such by the Florida Supreme Court 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.

- d The parties agree to participate in mediation in Broward County, Florida, 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.

#### **19.9 ASSIGNMENT; SUBCONTRACTING**

- a Neither party may assign, sublicense, or subcontract this Agreement, or any of its rights, obligations or duties hereunder, without the prior written consent of the other party.
- b In the event Supplier engages any subcontractor in the performance of this Agreement, Supplier shall ensure that all of Supplier's subcontractors perform in accordance with the terms and conditions of this Agreement. Supplier shall be fully responsible for all of Supplier's subcontractors' performance, and liable for any of Supplier's subcontractors' non-performance and all of Supplier's subcontractors' acts and omissions. Supplier shall defend at Supplier's expense, counsel being subject to Customer's approval or disapproval, and indemnify and hold Customer and Customer's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Supplier's subcontractors for payment for work performed for Customer by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Supplier's subcontractors or by any of Supplier's subcontractors' officers, agents, or employees. Supplier's use of subcontractors in connection with this Agreement shall be subject to Customer's prior written approval, which approval Customer may revoke at any time.

#### **19.10 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 19.1.

#### **19.11 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 labor disputes; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; and explosions.

- 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, including 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 labor 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.

#### 19.12 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.

#### 19.13 PRECEDENCE AND SEVERABILITY

- a. The Special Clauses, if any, 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.

#### 19.14 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 Florida without regard to its conflict of laws principles. Venue for any lawsuit by one party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

**19.15 INDEPENDENT CONTRACTOR**

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

**19.16 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 license to use such of the Works as are necessary, and to the extent necessary, for Customer to obtain and utilize 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 defend, counsel being subject to Customer's approval, and 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 or in satisfaction of any judgment 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.

**19.17 EMPLOYMENT PRACTICES**

- a In connection with performance of the Agreement and subject to federal and Florida 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, marital status, AIDS, HIV status, handicap or disability.

**19.18 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.

**19.19 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.

**19.20 GRATUITIES.**

- a Customer may, by written notice to Supplier, cancel the 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 the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement.
- b In the event the 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.

**19.21 INTERPRETATION.**

- a The 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 shall be relevant to supplement or explain any term used in the Agreement. Although the 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.

**20 EXECUTION**

IN WITNESS WHEREOF the parties hereto have executed the Agreement as follows:

**CUSTOMER**  
CITY OF FORT LAUDERDALE

\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

ATTEST:

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

\_\_\_\_\_  
Allyson C. Love, Acting City Manager

Approved as to form:

\_\_\_\_\_  
Senior Assistant City Attorney

WITNESSES:

**SUPPLIER**  
Brüel and Kjær Environment Management  
Solutions Inc.

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

By: \_\_\_\_\_  
Print Name:  
Title:  
(If not an officer, please attach proof of  
authorization.)

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

ATTEST:

(Corporate Seal)

\_\_\_\_\_  
Print Name:  
Title:

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011, by \_\_\_\_\_ as

\_\_\_\_\_ for Brüel and Kjær Environment Management Solutions Inc., a  
Delaware corporation authorized to transact business in the State of Florida.

(Seal)

\_\_\_\_\_  
(Signature of Notary Public -- State of \_\_\_\_\_)

(Print, Type, or Stamp Commissioned Name of  
Notary Public)

Personally Known \_\_\_\_\_ OR produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

**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, the rest of this Agreement will take precedence.

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

**Schedule B:CONTACTS**

Supplier Contacts		
Formal Notices	Name Address Telephone Fax eMail	Vice President Brüel & Kjaer EMS Inc. + 1 916 265 7709 + 1,916 265 7719 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Routine and operational communications	Name Address  Telephone Fax eMail	Service Delivery Manager Brüel & Kjaer EMS Inc. 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825 + 1,916 265 7705 + 1 916 265 7719 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Supplier's Bank Account	Account Name Account Number Bank Bank Address	Brüel & Kjaer EMS Inc 921258885 JPMorgan Chase Bank N.A Chicago, IL (No Street Address needed) Routing Number 071000013
Customer Support Centre	Telephone  Address  Fax Email Support Requests	+1 866 583 0280 +61 3 9508 4930 69 Kooyong Road Caulfield North Victoria 3161 Australia +61 3 9500 1191 <a href="mailto:cms@bksv.com">cms@bksv.com</a>
Customer Contacts		
Formal Notices	Name Address Telephone Fax eMail	Airport Manager Clara Bennett 6000 NW 21 Avenue, Fort Lauderdale, FL 33309 954-828-4955 954938-4974 <a href="mailto:cbennett@fortlauderdale.gov">cbennett@fortlauderdale.gov</a>
Routine and operational communications	Name Address Telephone Fax eMail	Noise Abatement Officer Florence Straugh 6000 NW 21 Avenue, Fort Lauderdale, FL 33309 954-828-4955 954938-4974 <a href="mailto:fstraugh@fortlauderdale.gov">fstraugh@fortlauderdale.gov</a>
Address for Invoices	Name Address Telephone Fax eMail	Accounts Payable 100 N Andrews Ave, Fort Lauderdale, FL 33301. 954-828-5173 <a href="mailto:AcctsPayable@Fortlauderdale.gov">AcctsPayable@Fortlauderdale.gov</a>

**Schedule C: SYSTEM ELEMENTS**

**C.1 HARDWARE**

Type	Description	Manufacturer	Model	Serial #
1	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	
2	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	
3	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	
4	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	
5	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	
6	Noise Terminal w/ BK4435 and 4184 Microphone	Bruel and Kjaer	BK3543	

**C.2 SUPPLIER SPARES PARTS**

Type	Description	Manufacturer	Model	Serial #	Location
None					

**C.3 SOFTWARE**

Item	Author	License Number	Users
None			

**C.4 DATA SUBSCRIPTIONS**

Type	Description of Data	Restrictions
None		

**C.5 APPLICATION SUBSCRIPTIONS**

Type	Description	Restrictions
None		

**C.6 REFERENCE DATA**

Description	Author	Frequency
None		