S H I P T O	AIRPORTS (561) 471-7425 AIRPORT MAINTENANCE 3700 BELVEDERE RD, P.B.I.A. BUILDING "D" WEST PALM BEACH FL 33406 ATTN: VIRGIL SKEEN

BOARD OF COUNTY COMMISSIONERS

KDO 120 0106220000000000784

IMPORTANT

THE ABOVE NUMBER MUST APPEAR ON ALL SHIPPING LABELS, PACKING SLIPS, TRANSPORT DOCUMENTS, INVOICES AND CORRESPONDENCE.

I S S U E D T O	Bruel & Kjaer EMS Inc. 2330 E Bidwell St Ste 210 Folsom CA 95630-3875 USA Bobbi Gallagher bobbi.gallagher@bksv.com 916-265-7701

ORDER DATE	DELIVERY DATE	F.O.B.
01-10-2022	09-30-2022	As Specified

VENDOR NUMBER	VENDOR ADDRESS	VENDOR CONTACT
LOCH0001	LOCH0001	LOCH0001

AGREEMENT NUMBER
KMA 680   SS200401B

Send Original Invoice To

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY FINANCE DEPT.
P.O. BOX 4036
WEST PALM BEACH, FL 33402-4036
TELEPHONE: 561-355-2912

ITEM	QUANTITY	UNIT	COMMODITY CODE ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	3.00000	QTR	92045 NoiseOffice Services Quarterly fee $35,776 includes ANOMS Service Fee $27,807 and NMT Maintenance Fee $7,969. MSDS: Not Required	35,776.000000	107,328.00
2	3.00000	QTR	92045 Bruel & Kjaer Radar Data Supply MSDS: Not Required	3,416.000000	10,248.00
3	3.00000	QTR	92045 Webtrak Quarterly payments for Webtrak services. MSDS: Not Required	4,644.000000	13,932.00

TAX EXEMPTION INFORMATION	STATE TAX EXEMPTION NUMBER 85-8012622286C-8 FEDERAL EXCISE TAX EXEMPTION NUMBER 59-74-0344K EXEMPTION CERTIFICATES WILL BE MAILED UPON REQUEST

ISSUER	TELEPHONE
Ydiel Sanchez EMAIL: ydsanchez@pbia.org	561-741-7425 EXT:

ORDER TOTAL
131,508.00

NOTES TO VENDOR:

1. To receive payment, Vendor's Legal Name; Address, & TIN/FEIN on its Invoice must be exactly as it is on its bid/quote/ response AND in the County's VSS system @ https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService. Failure to comply, may result in a delay in payment.
2. To receive payment by credit card, contact the Clerk & Comptroller's Office via email @ pbcpaymentmgr@mypalmbeachclerk.com.
3. Unless agreed to otherwise, the County's Standard Terms & Conditions located at @ http://discover.pbcgov.org/Purchasing are incorporated herein by reference. Additional Terms & Conditions may be noted in this order when applicable.
4. Unless agreed to otherwise, the County's Federal Standard Terms & Conditions for goods or services purchased with Federal funds located at @ http://discover.pbcgov.org/Purchasing are incorporated herein by reference. Additional Terms & Conditions may be noted in this order when applicable.

P.B.C. PURCHASING DEPARTMENT
50 S. MILITARY TRAIL, SUITE 110
WEST PALM BEACH, FL 33415-3199
PHONE: (561) 616-6800

RESP. DEPT: 120   UNIT: 2280
PRINT DATE: 04/12/22
PAGE NUMBER: 1   OF   1

NOISEOFFICE SERVICES AGREEMENT

BETWEEN

EMS BRÜEL & KJÆR INC.

AND

PALM BEACH COUNTY

Supplier Contract Reference: PBISO

Customer Contract Reference: SS200401

EMS
Brüel & Kjær

Table of Contents

1 Preamble

This Agreement made as of the 1st Day of January, 2020 (the "Effective Date") is between

EMS Brüel & Kjær Inc. (hereinafter called "Supplier")

and

Palm Beach County 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.
Radar Activation Date	date that System is connected to a new flight track data feed listed in Schedule C.4 Data Subscriptions
Customer Country	The United States of America
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 including subcontractors 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.
Subcontractor	third party engaged by the Supplier to provide all or part of the Services
Subscribed Applications	the list of applications listed in Schedule C.5
Subscribed Data	the list of data services listed in Schedule C.4

Term	Definition
Supplier Software	software listed in Schedule C.3 as having EMS Brüel & Kjær as the author.
Supplier Spare Parts	the list of System components shown in Schedule C.2
Support Request	a request in writing from Customer to Supplier for work to be performed under this Agreement as defined and in the form described in Clause 6.2
System	the hardware, software, on site spares, subscribed applications and subscribed data listed in Schedule C:
System Component	one of the items comprising the System.
System Upgrade	once off hardware and software upgrade of the System
Termination Services	The services described in Schedule F.2.
Third Party Software	software listed in Schedule C.3 as having an author other than EMS Brüel & 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 Customer public holidays and Australian public holidays.
Working Hours	between 8:30am and 5:30pm local time in the main place of business of Customer on any Working Day.

3   Term, Termination and Renewal

a   This Agreement shall commence on the Effective Date and continue for the Initial Term specified in Schedule F.1 Contract Term and any extension periods, which may be requested by Customer according to this Clause 3.

b   Customer may extend this Agreement for an additional period by notifying Supplier in writing, no later than 30 days prior to the end of the current term. The length of the extension period and the number of times that the customer may extend this Agreement are as specified in Schedule F.1 Contract Term.

c   If Customer does not advise Supplier 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 described in Schedule F.2.

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

If Schedule A service line item "Service Reporting" has status "Included", then:

a   Supplier shall assign an SDM and shall advise Customer of the name of the assigned SDM.

b   Supplier shall provide access to the Supplier ticket management system via a customer web portal.

6.2   System Support

If Schedule A service line item "System Support" has status "Included", then:

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 to the contact details for Customer Support listed in Schedule B:. When advising requests, 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

If Schedule A service line item "Customer Visits" has status "Included", then:

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

If Schedule A service line item "User Forum" has status "Included", then:

a   On request from Customer, Supplier will provide the number of tickets specified in Schedule D.2 each year of this Agreement to a User Forum.

b   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

If Schedule A service line item "Fault Management" has status "Included", then:

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 to the contact details for Customer Support listed in Schedule B: and in the form described in Clause 6.2 above.

d   Supplier will enter this information into the Supplier's ticket management system and a reply will be sent identifying the unique ticket number that is to be used in all future communication concerning this fault report.

e   Customer shall assist Supplier in diagnosing the fault by, if requested, supplying evidence of the fault such as listings of output, photographs, or other data. Such evidence may also include information about and from equipment other than the System.

f   If requested, Customer shall explain how the fault prevents substantial conformity of the System with the Specifications.

g   Supplier shall carry out remedial work either remotely or on Customer locations at Supplier's discretion and in accordance 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 out 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

If Schedule A service line item "Software Upgrades and Patches" has status "Included", then:

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   When an upgrade to Supplier Software requires an upgrade to Third Party Software, Supplier will advise Customer accordingly.

d   Customer acknowledges that an upgrade or new version of Third Party Software during the term of this Agreement, may require new or upgraded hardware and any additional cost of new hardware or software to support the upgrade is not included in this Agreement.

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 and the rates applicable for that work shall be as defined in Schedule F.5.

g   Supplier may declare a particular upgrade or set of upgrades to Supplier Software to be a new general release of the Supplier Software. Supplier reserves the right to cease supporting versions of Supplier Software that are more than two general releases older than the current general release or only to offer such support at increased Service Fees.

h   Nothing in this Clause 7.2 shall imply that Customer is entitled to any software except the Supplier 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

If Schedule A service line item "Hardware Repair" has status "Included", then:

a   The System hardware as defined in Schedule C.1 requiring physical repair will be repaired by return of the items to Supplier for repair unless explicitly stated otherwise.

b   Supplier shall determine whether, in order to deliver the Services, it is necessary to return a System Component or part(s) of a System Component.

c   If requested by Supplier, Customer shall securely and safely pack and dispatch such item(s) to the depot nominated by Supplier for repair or replacement and shall pay for freight and insurance to the nominated depot premises.

    d   Supplier shall repair or replace the item(s) according to the Service Levels and shall return the item(s) to Customer at Supplier's expense.

    e   Unless otherwise specified in this Agreement, Customer shall be responsible for re-installing the item(s) according the instructions from Supplier.

    f   If the System hardware in Schedule C.1 has a Repair Type "On-site" then the Supplier will be responsible for repairing or replacing the faulty equipment with the Supplier's spares. This would include all transport, preparation and installation costs.

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 such as telephone lines and network connections.

        (iii)   Faults caused by abnormal events, such as vandalism, lightning strikes and damage outside of Supplier's control.

8   System Management Services

8.1   System Monitoring

If Schedule A service line item "System Monitoring" has status "Included", then:

    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 is not the Responsible Party.

8.2   System Administration

If Schedule A service line item "System Administration" has status "Included", then:

    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

If Schedule A service line item "Periodic Hardware Services" has status "Included", then:

    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

If Schedule A service line item "Supplier Spares" has status "Included", then:

a   Supplier shall provide the Supplier Spare Parts at Suppliers 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

If Schedule A service line item "System Hosting" has status "Included", then:

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.

8.6   Backup and Restoration

If Schedule A service line item "Backup and Restoration" has status "Included", then:

a   The responsibility and frequency of system backup is stated in Schedule D.8. System Backup.

b   In the event of complete system failure, Supplier will restore the System from the latest available system backup.

9   Information Management Services

9.1   Data Processing Services

If Schedule A service line item "Data Processing Services" has status "Included", then:

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

If Schedule A service line item "Report Production Services" has status "Included", then:

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

If Schedule A service line item "Application Subscription" has status "Included", then:

    a   Supplier will provide the Subscribed Applications to Customer according to the Specifications and according to the Service Level. As required, Supplier will provide application patches and upgrades as well as hardware upgrades in Supplier's application infrastructure.

    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.

10.2   Data Subscription

If Schedule A service line item "Data Subscription" has status "Included", then:

    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.

    f   Additional costs incurred to Supplier from changes in third party data agreements during the Term will be passed on in accordance with Schedule F.5.

10.3   Reference Data

If Schedule A service line item "Reference Data" has status "Included", then:

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

11   Professional Services

If Schedule A service line item "Professional Services" has status "Included", then:

    a   No additional services shall be performed unless Supplier provides a written quotation, which is approved in writing by Customer prior to Supplier providing such services.

b   On request from Customer for additional services, Supplier shall provide a quotation for the additional services. Where applicable, the quotation shall be based on the rates shown in Schedule F.5.

12   New Modules

a   Supplier shall notify Customer of new module(s) applicable to the System when they are made available for general distribution along with the applicable additional license fees, installation fees, and/or additional Service Fees applicable to such new module(s).

b   The installation fees and/or any increase in Service Fees applicable to the new module(s) shall, where applicable, be based on the rates shown in Schedule F.5.

c   The new module(s) will only be made available to Customer following Customer's written acceptance of the additional license fees, installation fees, and or additional Service Fees applicable to the new module(s).

13   Obsolescence

a   Supplier may undertake a review of the System three (3) 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 or may only offer such support at increased Service Fees.

14   Customer Obligations

14.1   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.

b   Supplier Software is licensed to Customer under the standard EMS Brüel & Kjær End User License Agreement, with the following modification:

Modification to Section 13.1 The contract is made in and shall be governed by the laws of the ~~State of Victoria, Australia~~ **State of Florida**, and the parties submit to the nonexclusive jurisdiction of the courts of that State.

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 secure means (such as a virtual private network) to connect Customer workstations to Supplier's Hosted System. Supplier shall assist with information where necessary to establish this link.

b   On request from Supplier and in a timely manner, Customer shall provide all user IDs and passwords to Supplier as shall be reasonably required by Supplier to perform the Services.

c   Customer shall provide Supplier's service personnel with full and safe access to the System, and to spare parts storage areas, at all reasonable times for the purpose of providing the services required by this Agreement. Customer shall also provide suitable vehicle parking areas.

d   The access shall include unhampered working facilities, adequate light, heating, cooling, ventilation, suitable electrical outlets and computer network connections to enable Supplier to meet its obligations under this Agreement.

e   Customer shall provide Supplier's service personnel with all information, facilities, services and accessories reasonably required by Supplier to meet its obligations under this Agreement. Customer shall arrange and pay the fees for site specific permits, permissions and certificates required by Customer for site access by Supplier's personnel required for site access, including site specific training if required. At Supplier request, Customer will provide a cherry picker for NMT maintenance.

f   Customer shall provide, on request, a suitably qualified or informed representative to accompany Supplier's service personnel and to advise Supplier on access or any other matter within Customer's knowledge or control that will assist Supplier in meeting its obligations under this Agreement.

15   Confidentiality

a   Supplier will treat all of Customer's data as confidential and will only use that data for the purpose of meeting its obligations under this Agreement.

b   Supplier will not transfer or disclose any of Customer's data to any other party without the prior written consent of Customer.

c   This Clause 15 shall remain in effect during the Term of the Agreement and for a period of five (5) years after the termination of this Agreement.

16   Payment and Charges

16.1   Payment Terms

a   Customer shall pay to Supplier the Services Fees plus any applicable value-added-taxes. Customer is exempt from Florida State Sales and Use Taxes.

b   Invoices shall be issued the first calendar day of each quarterly period and milestones in accordance with Schedule F:.

c   c   Pursuant to Florida Statutes, payments will be made within forty-five {45} 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.

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.

16.2   *Availability of funding*

a   Customer's performance and obligation to pay under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

17   Warranties

a   Supplier warrants and represents that:

   (i)   Supplier has the professional ability, experience and expertise to perform the Services; and,

   (ii)   Supplier shall perform the Services hereunder in a good and workmanlike manner, and shall exercise the degree of skill and care required by customarily accepted good practice in accordance with all applicable laws, regulations codes, industry and professional standards, and the terms, conditions and specifications of this Agreement.

18   Limitation of Liability and Indemnities

a   Supplier's maximum aggregate liability under or in connection with supply of Services under this Agreement whether arising in contract, tort (including negligence) or otherwise, shall in no event exceed 1,000,000 USD.

b   Subject to this clause 18, Supplier shall indemnify Customer, its agents, employees and elected officers against all claims, liability, expenses, loss, costs, damages or causes of action that Customer incurs or suffers, arising directly from the Supplier's acts of omissions to a limit of no greater than 1,000,000 USD.

c   Supplier accepts no responsibility or liability for:

   i. any excessive delay by Customer in lodging a Support Request;

   ii. any loss or damage to, deterioration of, or faults in, The System to the extent attributable to an act or omission of Customer (including, but not limited to, damage from dropping or incorrect handling of the System Components, electrical damage from power interruptions or spikes to The System and data damage from power interruptions to The System).

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. At the option of Supplier, the Contract Variation Proposal shall lapse if it is not accepted within 180 days of receipt by Customer.

d   Where Supplier requires a variation to the Agreement, it shall notify Customer in writing of the nature of the variation it seeks, and send a formal Contract Variation Proposal identifying attendant price and schedule variations.

e   Contract Variation Proposals shall become effective when formally accepted in writing by duly authorised officers of both Supplier and Customer. Until then, the Agreement shall remain unaltered.

f   Supplier shall not be liable for any additional work undertaken or expenditure incurred by Customer in relation to the variation of this Agreement which has not been authorised pursuant to this procedure.

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

19.2   Customer Default

a   Supplier may terminate this Agreement on ten (10) days' prior written notice in writing to Customer if any of the following circumstances arise:

(i)   Any payment due to Supplier from Customer under this Agreement remains unpaid for a period of ninety (90) days except, if payment is not timely made for a reason for which Customer may withhold payment hereunder;

(ii)   Customer is in breach of the whole or any material part of this Agreement and this breach is not remedied within thirty [30] days of written notice by Supplier; provided, however, if the breach is curable, but not capable of being cured within thirty (30) days, Supplier may not terminate the Agreement if Customer promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion;

(iii)   Customer disposes of The System;

(iv)   Customer becomes the subject of any bankruptcy proceedings, becomes insolvent, or enters into receivership;

b   In the event of termination in accordance with this clause Supplier may:

(i)   Repossess any of its equipment in the possession, control, or custody of Customer;

(ii)   Retain any money paid;

(iii)   Charge a reasonable sum for work performed for which no sum has previously been charged;

(iv)   Be regarded as discharged from any further obligations under this Agreement;

(v)   Pursue any alternative or additional remedies afforded by the law.

c   Customer shall not be entitled to a refund of any fees paid or accrued prior to the effective date of such termination.

d   Customer shall not be entitled to compensation for loss of earnings or damages.

19.3   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,

(ii)   becomes insolvent or seeks relief in bankruptcy.

b   In the event of a default by Supplier, Customer may terminate the Agreement for cause by written notice to Supplier effective thirty (30) days after the date of such notice unless Supplier, within such thirty (30) day period, cures the default or provides evidence sufficient to prove to Customer's reasonable satisfaction that a default did not occur; provided, however, if the default is curable, but not capable of being cured within thirty (30) days, Customer may not terminate the Agreement if Supplier promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion.

19.4   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.

19.5   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, but this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief.

b   Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

c   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.

d   If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; Customer and Supplier agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert.

e   The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session.

f   Customer and Supplier will share the costs of the mediator equally.

g   If any party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, any party may refer the claim or dispute to arbitration, in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. The arbitration process will be commenced by service by one party on the other of a written notice that the dispute is to be referred to arbitration. The parties will then participate in good faith in the

arbitration. Unless otherwise agreed between the parties, the arbitrator will be nominated by the American Arbitration Association. Arbitration proceedings shall be held in Palm Beach, Florida. The expenses and fees of any such arbitration proceedings shall be borne equally by the parties. The award of the arbitrator or arbitrators shall be final and binding upon the parties, and judgment upon any such award may be entered in any court having jurisdiction. Nothing in this Agreement shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary.

19.6   Assignment

a   A party shall during the Term of the Agreement have the right to assign or otherwise transfer its rights or obligations under the Agreement to an affiliated company with the express prior written consent of the other party, which consent shall not be unreasonably withheld.

19.7   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   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.

19.8   Force Majeure

a   The Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any event beyond the control of the Supplier, including but not limited to, war, sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labour dispute, accident, fire, explosion, floods, storm, shortage of labour, fuel, raw material or machinery or technical failure where the Supplier has exercised ordinary care in the prevention thereof.

19.9   Precedence and Severability

a   The Special Clauses in Schedule G 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.

19.10 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.

19.11 Independent Contractor

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

19.12 Intellectual Property

a   Customer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, software, source codes and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Customer shall acquire no right, title or interest in or to the same except as expressly stated in this Agreement.

b   The Supplier grants to Customer a revocable, non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for Customer to obtain and utilise the intended benefit of the Services, under the EMS Brüel & Kjær End User License Agreement.

c   All data and other information, other than intellectual property described above in whatever form or medium, compiled or prepared by Supplier in performing its services or furnished to Supplier by Customer shall be the property of Customer and Customer shall have the unrestricted right to use or disseminate same without payment of further compensation to Supplier, provided that any future use of such material or work product by Customer for other than the specific purpose intended by the Agreement shall be at Customer's sole risk and without liability to Supplier.

d   Copies of Supplier's work product may be retained by Supplier for its own records.

e   If any claim is made against Customer that the Services infringe the patent, copyright or other intellectual property rights subsisting in the country or countries where Customer is located of any third party, Supplier shall indemnify Customer against all losses, damages, costs and expenses awarded against, or incurred by, Customer in connection with the claim or paid, or agreed to be paid, by Customer in settlement of the claim provided that:

(i)   Supplier is given full control of any proceedings or negotiations in connection with any such claim. Supplier shall consider a request by Customer to provide conflict counsel at Supplier's expense and shall not unreasonably withhold consent.; and

(ii)   Customer shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations.

19.13 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.

19.14 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 or usage of the trade 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.

20 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 An email is taken to be received at the time shown in a delivery confirmation report generated by the sender's email system.

21   Execution

IN WITNESS WHEREOF the parties hereto have executed the Agreement

on the .... day of .....JAN..2..8..2020....... 2019

R2020 0060

SIGNED for and on behalf Customer

SIGNED for and on behalf of Supplier

_____
Signature of authorised representative

_____
Signature of authorised representative

Kathleen M. Scarlett, Director of Purchasing

Greg Bracci, Vice President- Americas

_____
Name of authorised representative

_____
Name of authorised representative

In the presence of

In the presence of

_____
Printed name and title

_____
Printed name and title

Sandy Shea, Senior Buyer

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

_____
County Attorney

Schedule A: Summary Of Services Provided

The following table lists the service line items to be provided under this Agreement.

The Services are defined in the body of this Agreement, and apply to specify System Elements and Service Elements.

Service Line Item	Clause	Schedule	Status
Service Management			
Service Reporting	6.1	B	Included
System Support	6.2	B	Included
Customer Visits	6.3	D.1	Included
User Forum	6.4	D.2	Included
Maintenance Services			
Fault Management	7.1	C	Included
Software Upgrades and Patches	7.2	C.3	Included
Hardware Repair	7.3	C.1	Included
Technology Management Services			
System Monitoring	8.1	C	Included
System Administration	8.2	D.4	Included
Periodic Hardware Services	8.3	D.5	Included
Supplier Spares	8.4	C.2	Not Included
System Hosting	8.5	D.3	Not Included
Backup and Restoration	8.6	D.8	Not Included
Information Management Services			
Data Processing Services	9.1	D.6	Included
Report Production Services	9.2	D.7	Not Included
Subscription Services			
Application Subscription	10.1	C.5	Not Included
Data Subscription	10.2	C.4	Included
Reference Data	10.3	C.6	Included
Professional Services			
Professional Services	11		Included

Schedule B: Contacts

Supplier Contacts		
Formal Notices	Name	Director - Americas
	Address	EMS Brüel & Kjær Inc. 2330 East Bidwell Street, Suite 210 Folsom CA 95630
	Telephone	+ 1 916 265 7700
	eMail	cms@emsbk.com
Routine and operational communications	Name	Service Delivery Manager
	Address	EMS Brüel & Kjær Inc. 2330 East Bidwell Street, Suite 210 Folsom CA 95630
	Telephone	+ 1 916 265 7700
	eMail	cms@emsbk.com
Suppliers Bank Account	Account Name	EMS Brüel & Kjær
	Account Number	921258885
	Bank	JPMorgan Chase Bank N.A
	Bank Address	Chicago, IL (No Street Address needed) Routing Number 071000013
Customer Support Centre	Telephone	+1 8665830280 +61 3 9508 4930
	Address	Level 12, 432 St Kilda Road Melbourne VIC 3004 Australia
	Email Support Requests	cms@emsbk.com

Customer Contacts		
Formal Notices	Name	Purchasing Director Ms. Kathleen M. Scarlett
	Address	50 South Military Trail, Suite 110 West Palm Beach, FL 33415-3199
	Telephone	(561) 616-6800
	eMail	{Customer contact email}
Routine and operational communications	Name	Manager of Noise Abatement & Community Affairs Ms. Casandra R. Davis

Customer Contacts

	Address	Palm Beach Airport
		Building No. 846
		West Palm Beach, FL 33406-1491
	Telephone	(561) 471-7468
	eMail	cdavis@pbia.org
Address for Invoices	Name	Accounts Payable
	Address	Palm Beach County
		Department of Airports
		Building D,
		Palm Beach International Airport
		West Palm Beach, FL, 33406
	Telephone	(561) 471-7425
	eMail	rbryant2@pbia.org

Schedule C: System Elements

C.1. Hardware

Type	Description	Manufacturer	Model	Serial#	Location	Repair Type	Owner
Server	ANOMS	HP	DL380-G5		Airport Data Centre	On site	Server
Server	Rover	HP	DL320-G5		Airport Data Centre	On site	Server
NMT 1	BK	Brüel & Kjær	BK4435		Petty Park, WPB	On site**	NMT 1
NMT 4	BK	Brüel & Kjær	BK4435		836 Omar Rd, WPB	On site**	NMT 4
NMT 5	BK	Brüel & Kjær	BK4435		308 Island Rd, PB	On site**	NMT 5
NMT 6	BK	Brüel & Kjær	BK4435		Lang Rd & W. Shannondale Rd, WPB	On site**	NMT 6
NMT 7	BK	Brüel & Kjær	BK4435		611 Easy St, WPB	On site**	NMT 7
NMT 8	BK	Brüel & Kjær	BK4435		1008 Elm Rd, PB	On site**	NMT 8

**Note: Support of NMTs is (onsite) Best Effort Level per Schedule G.4

The scope of services includes onsite repair and replacement service for the following NMT equipment only, unless otherwise mutually agreed

Quantity	Component	Model	Location	Serial Number
13	NMT	4435 or 4441 Noise Analyzer as applicable	On site	N/A
13	NMT	4184 Outdoor Microphone Unit	On site	N/A
13	NMT	Rittal SK3113 Temperature Regulator	On site	N/A
13	NMT	Rittal SK3107.110 Enclosure Heater	On site	N/A
13	NMT	Rittal SK3108.110 Axial Fan	On site	N/A
13	NMT	Standard or Cell Phone Modem*	On site	N/A
13	NMT	83008 Backup Battery*	On site	N/A
13	NMT	PSC124001 Battery Charger*	On site	N/A
13	NMT	Isobar 418972 Surge Suppressor for AC Mains*	On site	N/A
13	NMT	MGC DLP 4.4 Surge Suppressor for Telephone Lines*	On site	N/A

Quantity	Component	Model		Location	Serial Number
13	NMT	AO0028, 10 metre Microphone Cable		On site	N/A
13	NMT	Solar Powered System*		On site	N/A

* If so equipped.

C.2. Supplier Spares Parts

Type	Description	Manufacturer	Model	Serial#	Location
None					

C.3. Software

Item	Author	Licence Number	Users
ANOMS 8.5.5	EMS Brüel & Kjær		3

C.4. Data Subscriptions

Type	Description of Data	Restrictions	Service Levels
Flight Track and Plan Data	Aircraft position data derived from interface to flight track data and correlated with plan data	Data may be used as input to ANOMS and Subscribed Applications	Schedule E.3

C.5. Application Subscriptions

Type	Description	Restrictions	Service Levels
WebTrak Replay	Web-based application providing the public and/or other stakeholders with access to noise and track information for historic and near-real-time operations.	Unlimited users	Schedule E.2

C.6. Reference Data

Description	Author	Frequency	Notes
FAA Aircraft Register	FAA	Quarterly	
Annual map data	TomTom	Annual	

Schedule D: Service Elements

D.1. Mandatory Customer Support Visits

Number of Visits per Year: 4

D.2. User Forum Attendees

Number of included User Forum Attendees per year: 1

D.3. System Hosting Services

Hosted Item	Task Description
None	

D.4. System Administration Services

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

D.5. Periodic Hardware Services

Applies To	Task Description	Frequency
All Installed NMTs	- Perform visual inspection for problems / corrosion. - Check operation on site. - Calibration of the unit. - Update of NMT firmware if necessary - Download and update of the configuration files - Check of batteries (Note that replacement of NMT batteries is not included as part of this Service) - Replacement of bird spikes and windshields as required - Microphone silica gel desiccant to be replaced at each visit	Annually
All Server Hardware	Preventative maintenance as suggested by the manufacturer of the hardware	Annually

D.6. Data Processing Services

Task	Task Description	Frequency
Data Completeness Processing	• Check status of downloads from NMTs and re-initiate downloads as necessary. • Check completeness of radar/plan information from overnight processing and re-initiate as necessary. • Re-initiate batch processing as required based on data downloads.	Business days

D.7. Report Production Services

Task	Task Description	Frequency
None		

D.8. System Backup

Task	Task Description Responsible	Frequency
Backup of system software	Customer	

Schedule E: Service Levels

E.1. Service Requests and Fault Resolution

Category	Description	Response	Resolution Time	Target Achievement
1: Major Fault	Loss of collection of time perishable data. Faults that may lead to data loss or data corruption. Unable to start the system Loss of unrecoverable data	4 Working Hours	2 Working Days, except rebuild of deployed server 5 Working Days for the rebuild of the deployed server	85% of all tickets to meet target resolution times. Measured over a period of one month.
2: Major Fault	Key function inoperable Noise monitor calibration error	4 Working Hours	5 Working Days	
3: Minor Fault	Reproducible loss of functionality	2 calendar days	1 month	Target applies when more than one ticket fails to meet the target resolution time in the month.
3: Minor Fault	Minor software issues that do not affect day to day operation of NOMS	2 calendar days	1 month – fixes agreed within scope of a future software upgrade	
3: Minor Fault	Non-reproducible abnormalities	2 calendar days	Ticket closed within 1 month if abnormality not reproduced	
Request	"How do I?" questions.	2 calendar days	1 month to answer	

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

E.2. WebTrak Replay Subscribed Application Service

Area	Service Definition	Measurement (Monthly)	Target Achievement
Application Availability	Application is available if it can be loaded, the map is displayed, and historical flight data is available.	Accessible hours / available hours Available hours are 24 x days per month less Planned Outage and excludes Non-Application Outage. Planned Outage must have 7 days of notice and be less than 4 hours. Non-Application Outage is outages with ISPs and/or individual client workstations	96.0%

Area	Service Definition	Measurement (Monthly)	Target Achievement
Access Reliability	The number of times the application is unavailable in any month.	Number of failures where the application is unavailable for greater than fifteen minutes	2

E.3. Subscribed Radar Data Service

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

E.4. SkyTrak Subscribed Data Service

Area	Service Definition	Measurement (Monthly)	Target Achievement

Not Applicable

E.5. ARTS Gateway Subscribed Data Service

Area	Service Definition	Measurement (Monthly)	Target Achievement

Not Applicable

E.6. WebTrak MyNeigbourhood Subscribed Application Service

Area	Service Definition	Measurement (Monthly)	Target Achievement

Not Applicable

Schedule F: Term, Termination, and Service Fees

F.1. Contract Term

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

F.2. Termination Services

None

F.3. Initial Service Fees

Item	Due Date	Quarterly (USD)	Annual (USD)
BASE YEAR			
ANOMS Service Fee	Quarterly in Arrears	$26,210	$104,842
NMT Maintenance Fee	Quarterly in Arrears	$7,512	$30,048
EMS Brüel & Kjær Radar Data Supply	Quarterly in Arrears	$3,219	$12,876
WebTrak	Quarterly in Arrears	$4,378	$17,510
TOTAL for Year 1		**$41,319**	**$165,276**
OPTION YEAR 1			
ANOMS Service Fee	Quarterly in Arrears	$26,997	$107,988
NMT Maintenance Fee	Quarterly in Arrears	$7,737	$30,948
EMS Brüel & Kjær Radar Data Supply	Quarterly in Arrears	$3,316	$13,264
WebTrak	Quarterly in Arrears	$4,509	$18,036
TOTAL for Option Year 1		**$42,559**	**$170,236**
OPTION YEAR 2			
ANOMS Service Fee	Quarterly in Arrears	$27,807	$111,228
NMT Maintenance Fee	Quarterly in Arrears	$7,969	$31,876
EMS Brüel & Kjær Radar Data Supply	Quarterly in Arrears	$3,416	$13,664
WebTrak	Quarterly in Arrears	$4,644	$18,576
TOTAL for Option Year 2		**$43,836**	**$175,344**

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

F.4. Service Fee Increases

None

F.5. Additional Service Fee Basis

Item	Amount ({{Currency}})
Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	190 USD per hour, such fee subject to annual increases as defined in Clause F.4 above
Third Party software, hardware and services costs	At Cost plus 15%
Travel, accommodation, meals, disbursements and other expenses.	At Cost plus 15%
New Modules added to The System: Hardware Software	Annual Maintenance Fee: 12% of Hardware Price 12% of Module Licence Fee

Schedule G: Special Clauses

G.1. Palm Beach County Office of the Inspector General Audit Requirements

Pursuant to Palm Beach County Code, Section 2-421 – 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

G.2. No Third Party Beneficiaries

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the Customer and/or the Supplier.

G.3. Insurance

G.3.1   Supplier shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Supplier under the Agreement.

G.3.2   <u>Commercial General Liability</u> Supplier shall maintain Commercial General Liability at a limit of Liability not less than $5,000,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by Customer's Risk Management Department. Supplier shall provide this coverage on a primary basis.

G.3.3   <u>Business Automobile Liability</u> Supplier shall maintain Business Automobile Liability at a limit of liability not less than $1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event Supplier doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing Supplier to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Supplier shall provide this coverage on a primary basis.

G.3.4   <u>Worker's Compensation Insurance & Employers Liability</u> Supplier shall maintain Worker's Compensation Insurance & Employers Liability in accordance with the law in effect in the state in which the Services are supplied.

G.3.5   Supplier shall maintain <u>Electronic Errors & Omissions Liability</u> at a limit of liability not less than $1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds $10,000, Customer reserves the right, but not the obligation, to review and request a copy of Supplier's most recent annual report or audited financial statement. For policies written on a Claims-Made basis, Supplier warrants the Retroactive Date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non- renewed, switched to an Occurrence Form, retroactive date advanced; or any other went triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, Supplier shall purchase a SERP

with a minimum reporting period not less than three (3) years. Supplier shall provide this coverage on a primary basis.

G.3.6 *Additional Insured* Supplier shall endorse the Customer as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read Palm Beach County Board of County Commissioners. a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Supplier shall provide this coverage on a primary basis.

G.3.7 *Waiver of Subrogation* Supplier agrees by entering into this Agreement to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Supplier shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should Supplier enter into such an agreement on a pre-loss basis.

G.3.8 *Certificates of Insurance.* Immediately following notification of the award of this Agreement and/or within five (5) days of a written request by Customer, Supplier shall deliver to Customer a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. Supplier shall provide notice of any cancellation or material change in coverage within ten (10) days of Supplier's notification.

G.3.9 *Umbrella or Excess Liability.* If necessary, Supplier may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not Less than the highest Occurrence limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The Customer shall be specifically endorsed as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a Follow-Form basis.

G.3.10 *Right to Review* Customer, by and through its Risk Management Department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverage, or endorsements.

G.4. NMT Service – Best Effort Level

G.4.1 Supplier shall support the B&K 4435 Noise Monitoring Terminals at a Best Effort Level. The following will apply:

G.4.1.1 Repair stock will dictate how long this service can be provided

G.4.1.2 There will be no guaranteed repairs or parts replacements

G.4.2 In the event that an NMT is removed from service, the annual fee is reduced by $800.00 per NMT. This is the pro-rata NMT fee less fixed costs for overall management of Best Effort Level NMT services.

G.5. Non-Discrimination Policy

In this section, references to Palm Beach County means Customer.

NON-DISCRIMINATION POLICY
CONTRACT NO. SS200401

The CUSTOMER is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the SUPPLIER warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

SUPPLIER:

EMS Brüel & Kjær Inc.
Company Name

Signature

Greg Bracci
Name (type or print)

G.6. Public Records, Access and Audits

PUBLIC RECORDS, ACCESS AND AUDITS

The Supplier shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The Customer shall have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the Supplier's place of business.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Supplier: **(i) provides a service; and (ii) acts on behalf of the Customer as provided under Section 119.011(2), F.S.**, the Supplier shall comply with the requirements of Section 119.0701, F.S., as it may be amended from time to time. The Supplier is specifically required to:

A.   Keep and maintain public records required by the Customer to perform services as provided under this Agreement.

B.   Upon request from the Customer's Custodian of Public Records (Customer's Custodian) or Customer's representative/liaison, on behalf of the Customer's Custodian, provide the Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Supplier further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C.   Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the Supplier does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the Customer.

D.   Upon completion of the Agreement, the Supplier shall transfer, at no cost to the Customer, all public records in possession of the Supplier unless notified by Customer's representative/liaison, on behalf of the Customer's Custodian, to keep and maintain public records required by the Customer to perform the service. If the Supplier transfers all public records to the Customer upon completion of the Agreement, the Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Supplier keeps and maintains public records upon completion of the Agreement, the Supplier shall meet all applicable requirements for retaining public records. All records stored electronically by the Supplier must be provided to Customer, upon request of the Customer's Custodian or the Customer's representative/liaison, on behalf of the Customer's Custodian, in a format that is compatible with the information technology systems of Customer, at no cost to Customer.

Supplier acknowledges that it has familiarized itself with the requirements of Chapter 119, F. S., and other requirements of state law applicable to public records not specifically set forth herein. Failure of the Supplier to comply with the requirements of this Article, Chapter 119, F.S. and other applicable requirements of state law, shall be a material breach of this Agreement. Customer shall have the right to exercise any and all remedies available to it for breach of contract, including but not limited to, the right to terminate for cause.

IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

G.7. Public Entity Crimes

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the Supplier certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder,
have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

July 1, 2021

Greg Bracci
Vice President - Americas
Brüel & Kjær EMS Inc.
2330 East Bidwell Street, Suite 210
Folsom, CA 95630

Re: Contract No. SS200401/SS for NoiseOffice Services Agreement

Dear Mr. Bracci:

This letter is to inform you that the Department of Airports of Palm Beach County has indicated their intent to exercise the Option Year 2 renewal of the subject Agreement for NoiseOffice Services Agreement between your company and Palm Beach County (County) for the period 1/01/2022 through 12/31/2022.

The original terms and conditions remain the same; however, pricing for the calendar year 2022 will be $175,344, as provided for in Schedule F.3 of the Contract. This amount is based upon the annual fees of $111,228 ($27,807 per quarter) for the ANOMS Service Fee, $31,878 ($7,969 per quarter) for the NMT Maintenance Fee, $13,664 ($3,416 per quarter) for the EMS Brüel & Kjær Radar Data Supply, and $18,576 ($4,644 per quarter) for WebTrak. In addition to this amount, up to an additional $20,000.00 is authorized for any Additional Services required by the County to be paid in accordance with Schedule F.5 of the Contract.

If you have any questions, please contact me at (561) 616-6805.

Sincerely,

Kathleen M. Scarlett
Director of Purchasing

cc: Casandra Davis, Manager Noise Abatement-Community Affairs, Airports
     Anne Helfant, Assistant County Attorney III, County Attorney's Office
     Irwin Jacobowitz, Director, Contract Development and Control Finance
        Department
     File