

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of the date stated on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, on behalf of its Department of Aviation ("**City**"), and **BRUEL & KJAER EMS, INC.**, a Delaware corporation authorized to do business in Colorado ("**Consultant**").

### WITNESSETH

**WHEREAS**, the City owns, operates and maintains Denver International Airport, (hereinafter referred to as "**DIA**" or the "**Airport**"); and

**WHEREAS**, the Airport desires to obtain Noise Office Services for its ANOMS aircraft noise monitoring system; and

**WHEREAS**, the Consultant is qualified and ready, willing and able to perform the services as set forth in this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

**1. LINE OF AUTHORITY:** The City's Manager of Aviation, her designee or successor in function ("**Manager of Aviation**" or "**Manager**") authorizes all work performed under this Agreement. The Manager hereby delegates her authority over the work described herein to DIA's Noise Officer as the Manager's authorized representative for the purpose of administering, coordinating, and approving work performed by the Consultant under this Agreement. The Consultant shall submit its reports, memoranda, correspondence and submittals to the Noise Officer. The Manager may rescind or amend any such designation of representative or delegation of authority, and may from time to time designate a different individual to act as Noise Officer, upon notice to the Consultant.

The Consultant agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Noise Officer with any City agency, or any person or firm under contract with the City doing work which affects the Consultant's work.

**2. PROFESSIONAL SERVICES:**

**A. General:** The Consultant agrees to diligently and professionally provide Noise Office Services to include, consulting services to City for the maintenance, support, upgrade and continued development of the Denver International Airport noise monitoring system. In addition, the Consultant shall assist Denver International Airport in conducting noise studies related planning and analysis as needed. The Consultant shall perform all the services and produce all of the deliverables set out in the Scope of Work attached hereto as **Exhibit A** and as directed by the Noise Officer pursuant to specific Task Orders.

**B. Noise Office Services:** The Consultant agrees to furnish all of the technical, administrative, professional and other services; all supplies and materials, equipment, printing,

vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources required to perform and complete the Scope of Work described in the attached **Exhibit A**.

**C. Professional Responsibility:** The Consultant shall faithfully perform the work required under this Agreement in accordance with the standard of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

**D. Additional Services:** The Consultant may also perform services, hereinafter referred to as "Additional Services," which relate to the subject matter of this Agreement, but which the Manager determines to be not described in the Scope of Work or in excess of the requirements of the Scope of Work. The Consultant shall be compensated for such additional Services only if the services and the amount of fees and reimbursable expenses therefore have been authorized in writing in advance by the Manager, in accordance with the billing rates set out herein. The total amount of fees and reimbursable expenses for Additional Services, and the cost of performing them, shall not be deemed to constitute an agreement by the City to an increase in the Maximum Contract Liability set forth in Section 3 of this Agreement.

**3. MAXIMUM CONTRACT LIABILITY:**

**A.** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of the sum of **Two Million Four Hundred Six Thousand Two Hundred Thirty Dollars and No Cents (\$2,406,230.00)**.

**B.** The obligations of the City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Consultant acknowledges that (i) City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**C.** Payment under this Agreement shall be paid from the City and County of Denver Airport Revenue Fund and from no other fund or source. The City has no obligation to make payments from any other source. The City is not under any obligation to make any future encumbrances or appropriations for this contract nor is the City under any obligation to amend this Agreement to increase the Maximum Contract Amount above.

**4. INVOICING PROCEDURES.** The City agrees to pay to the Consultant, and the Consultant agrees to accept as its sole compensation for work performed, an amount based on the Consultant's monthly invoices for costs incurred and services rendered, which invoices will be based on approved fixed price Task Orders, hourly rates and reimbursable expenses set forth below or in **Exhibit A** attached hereto.

The following shall apply to Task Orders for Additional Services:

**A.** If any of the Consultant's personnel are assigned to and are performing tasks normally done by persons having a lower hourly rate classification, such work or services shall be billed at the lower hourly rate. Consultant shall make every effort to utilize the lowest grade personnel qualified to perform the tasks assigned.

**B.** All costs incurred by Consultant during its performance of this Agreement shall be presumed to be included in the rates stated in Exhibit A. The cost of preparing and submitting invoices shall not be billed; however, the cost of preparing Task Orders may be billed.

**C.** Payments shall be made to Consultant based upon monthly invoices and receipts submitted by Consultant, which invoices have been audited and approved by City, and subject to the Maximum Contract Liability. Payments will be made to Consultant in accordance with the City's Prompt Payment ordinance. Invoices for Additional Services shall include the following:

- (1) A brief status report that describes the progress of the work and a summary of the work performed under each Task Order during the period covered by the invoice.
- (2) A statement of hours spent. Time sheets shall be maintained by Consultant and shall be available for examination by City, at City request.
- (3) The amounts shown on the invoices shall comply with and clearly reference the relevant Task Order, the applicable hourly rate and reimbursable expense rates shown above.
- (4) Consultant shall submit itemized business expense logs or copies of receipts for all reimbursable expenses.
- (5) The signature of an officer of Consultant, along with such officer's certification that it has examined the invoice and has found it to be correct, shall be included on all invoices.

**D.** City reserves the right to reject and not pay any invoice or part thereof where the Manager determines that the amount invoiced to date exceeds the amount that should be paid based upon its determination of the work that has been performed. City, however, shall pay any undisputed items contained in the invoice. Disputes concerning payments under the provisions of this Agreement shall be resolved by administrative hearing pursuant to the procedures of Section 5-17, Revised Municipal Code.

**5. TERM:** The term of this Agreement shall commence on May 1, 2014, and shall terminate on April 30, 2019, *except that* the Manager, in her sole discretion, may renew and continue this Agreement for additional periods of up to one year at the same prices, terms, and conditions. However, no more than two (2) years of extensions shall be made to the original Agreement.

**6. EXAMINATION OF RECORDS:**

**A.** In connection with any consulting services performed hereunder on items of work toward which federal funds may be received under the Airport and Airway Improvement Act of 1982, as amended, the City and County of Denver, the Federal Aviation Administration, the Comptroller General of the United States and any other duly authorized representatives shall have access to any books, documents, papers and records of Consultant's which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and transcriptions. Consultant further agrees that such records will contain information concerning the hours and specific tasks performed along with the applicable federal project number.

**B.** The City shall also have the right to audit, examine and copy the Consultant's records which are related to work performed under this Agreement. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Consultant, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**7. CITY REVIEW OF PROCEDURES:** The Consultant agrees that, upon request of the Noise Officer, at any time during the term of this Agreement or three years thereafter, it will make full disclosure to the City of the means, methods, and procedures used in performance of services hereunder.

**8. DEFENSE AND INDEMNIFICATION:**

**A.** Consultant hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Consultant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the cause of claimant's damages.

**C.** Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## **9. INSURANCE:**

**A.** Consultant shall obtain and keep in force during the entire term of this Agreement, all of the insurance policies described in the City's form of insurance certificate which is attached to this Agreement as **Exhibit B** and incorporated herein. Such insurance coverage includes workers' compensation and employer liability, commercial general liability, business automobile liability, and professional liability. Upon execution of this Agreement, Consultant shall submit to the City a fully completed and executed original of the attached insurance certificate form, which specifies the issuing company or companies, policy numbers and policy periods for each required coverage. In addition to the completed and executed certificate, Consultant shall submit a copy of a letter from each company issuing a policy identified on the certificate, confirming the authority of the broker or agent to bind the issuing company, and a valid receipt of payment of premium.

**B.** The City's acceptance of any submitted insurance certificate is subject to the approval of the City's Risk Management Administrator. All coverage requirements specified in the certificate shall be enforced unless waived or otherwise modified in writing by the City's Risk Management Administrator.

**C.** Consultant shall comply with all conditions and requirements set forth in the insurance certificate for each required coverage during all periods in which coverage is in effect.

**D.** Unless specifically excepted in writing by the City's Risk Management Administrator, Consultant shall include all subconsultants performing services hereunder as insureds under each required policy or shall furnish a separate certificate (on the form certificate provided), with authorization letter(s) for each subconsultant, or each subconsultant shall provide its own insurance coverage as required by and in accordance with the requirements of this section of the Agreement. All coverages for subconsultants shall be subject to all of the requirements set forth in the form certificate and Consultant shall insure that each subconsultant complies with all of the coverage requirements.

**E.** The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City and County of Denver, its officers, officials and employees.

**10. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Consultant has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City as required by Charter and ordinance.

**11. ASSIGNMENT:** The Consultant covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the City's Manager of Aviation thereto. Any attempt by the Consultant to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of the Consultant hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager.

**12. INFORMATION FURNISHED BY CITY:** The City will furnish to the Consultant available information concerning Denver International Airport and any such other matters that may be necessary or useful in connection with the work to be performed by the Consultant under this Agreement. The Consultant shall be responsible for the verification of the information provided to the Consultant.

**13. FEDERAL PROVISIONS:** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendix 1 is incorporated herein by reference.

**14. STATUS OF CONSULTANT AS INDEPENDENT CONTRACTOR:** It is understood and agreed by and between the parties hereto that the status of the Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of the Charter of the City, and it is not intended nor shall it be construed that the Consultant, its employees or subcontractors are employees or officers of the City under Chapter 18 of the Revised Municipal Code or for any purpose whatsoever.

**15. TERMINATION:**

**A.** Nothing herein shall be construed as giving the Consultant the right to perform services under this Agreement beyond the time when Consultant is notified in writing that such services are unsatisfactory to the Manager.

**B.** The City may by notice in writing to the Consultant, terminate this Agreement, in the event that the Consultant fails to commence rectification of a default for which the Consultant is solely responsible, of any obligation to be performed or observed under this Agreement within seven (7) days of being given notice by the City to remedy the default; or to remedy the default set out in a notice under this clause within thirty (30) days of the notice. If this Agreement is terminated by the City for cause, the Consultant shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City, (2) the reasonable value to the City of the work which the Consultant performed prior to the date of the termination notice, but which had not yet been approved for payment, and (3) the cost of any work which the Manager

approves in writing which he determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated for the convenience of the City and without the fault of the Consultant, the Consultant shall also be compensated for any reasonable costs it has actually incurred in performing services hereunder prior to the date of the termination and any reasonable termination costs.

**C.** Either party may by notice in writing to the other party, terminate this Agreement without cause on thirty (30) days written notice. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Consultant is using by whatever method it deems expedient, and the Consultant shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City, and these documents and materials shall be the property of the City.

**D.** Upon termination of this Agreement by the City, the Consultant shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

**16. NOTICES:** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

by Consultant to:	Manager of Aviation Denver International Airport 8500 Peña Boulevard, 9 <sup>th</sup> Floor Denver, Colorado, 80249-6340
with a copy to:	Noise Office Denver International Airport 8500 Peña Boulevard, 6 <sup>th</sup> Floor Denver, Colorado, 80249-6340
and by City to:	Bruel & Kjaer EMS, Inc. 1050 Fulton Ave., Suite 213 Sacramento, California 95825

**17. NO WAIVER OF RIGHT:** No assent, expressed or implied, to any breach of any one or more of the covenants, terms and provisions of this Agreement shall be deemed or taken to be by the City a waiver of any succeeding or other breach.

**18. ADMINISTRATIVE HEARING:** Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final,

subject only to the Consultant's right to appeal the determination under Colorado Rule of Civil Procedure, Rule 106.

**19. BOND ORDINANCES; GOVERNING LAW; VENUE:**

**A.** This Agreement is made under and shall be governed by the laws of Colorado. Each and every term, provision or condition herein is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto.

**B.** This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Denver Municipal Airport System and to any other bond ordinances which amend, supplement, or replace such bond ordinances.

**C.** Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

**20. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Consultant further agrees to insert the foregoing provision in all subcontracts hereunder.

**21. PERSONNEL ASSIGNMENTS.**

**A.** The Consultant shall submit to the Noise Officer a list of all additional key professional personnel who will perform work under this Agreement within thirty days after this Agreement has been executed, together with complete resumes and other information describing their ability to perform the tasks assigned. Such personnel must be approved in writing by the Noise Officer. It is the intent of the parties hereto that all key professional personnel be engaged to perform their specialty for all such services required by this Agreement and that the Consultant's and the sub-consultant's key professional personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

**B.** If the Consultant decides to replace any of its key professional personnel, it shall notify the Noise Officer in writing of the changes it desires to make. To the extent that it is within the power of the Consultant, no such replacement shall be made until the replacement is approved in writing by the Noise Officer, which approval shall not be unreasonably withheld. The Noise Officer shall respond to the Consultant's written notice regarding replacement of key professional personnel within fifteen days after the Noise Officer receives the list of key professional personnel which the Consultant desires to replace. If the Noise Officer or his designated representative does not respond within that time, the listed personnel shall be deemed to be approved.

**C.** If, during the term of this Agreement, the Noise Officer determines that the



performance of approved key personnel is not acceptable, he shall notify the Consultant, and he may give the Consultant notice of the period of time which the Noise Officer considers reasonable to correct such performance. If the Noise Officer notifies the Consultant that certain of its key personnel should be reassigned, the Consultant will use its best efforts to obtain adequate substitute personnel within thirty days from the date of the Noise Officer's notice.

**D.** While the Consultant may retain and contract with sub-consultants, no final agreement with any such sub-consultant shall be entered into without the prior written consent of the Manager. Requests for such approval must be made in writing and include a description of the nature and extent of the services to be provided by the sub-consultant, the name, address, the professional experience and qualifications of the sub-consultant and any other information which may be requested by the Manager. Approval of the sub-consultant shall not relieve the Consultant of any obligations under this Agreement. Any final agreement with the approved sub-consultant must contain a valid and binding provision whereby the sub-consultant waives any and all rights to make a claim of payment against any City property arising out of the performance of the agreement. Dimensions International is an approved sub-consultant.

**E.** Because the Consultant's represented professional qualifications are a consideration to the City in entering into this Agreement, the Manager shall have the right to reject any proposed sub-consultant deemed unqualified or unsuitable for any reason to perform the proposed services, and the Manager shall have the right to limit the number of sub-consultants.

**F.** The Consultant shall not retain any sub-consultant to perform work under this Agreement if the Consultant is aware, after a reasonable written inquiry has been made, that it is connected with the sale or promotion of equipment or material which is or may be used on work related to or following on from this Agreement, or that any other conflict of interest exists.

**22. PROMPT PAY TO SUBCONSULTANTS:** Consultant is subject to D.R.M.C. Section 20-112 wherein Consultant is to pay its subconsultants in a timely fashion. A payment is timely if it is mailed to the subconsultant no later than seven days after receipt of any payment from City. Any late payments are subject to a late payment penalty as provided for in the prompt pay ordinance (Section 20-107 through 20-118).

**23. CONFLICT OF INTEREST:** The Consultant agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Consultant written notice which describes the conflict. The Consultant shall have thirty days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**24. TAXES AND COSTS:** The Consultant shall promptly pay, when due, all taxes, bills, debts and obligations it incurs performing work under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned

by the City.

**25. COMPLIANCE WITH ALL LAWS AND REGULATIONS:** All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of the City and County of Denver.

**26. COMPLIANCE WITH PATENT, TRADEMARK, COPYRIGHT LAWS:**

**A.** Consultant agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. Consultant will not utilize any protected patent, trademark or copyright in performance of its work unless it has obtained proper permission and all releases and other necessary documents. If Consultant prepares any documents which specify any material, equipment, process or procedure which is protected, Consultant shall disclose such patents, trademarks and copyrights in the construction drawings or specifications.

**B.** Consultant further agrees to release, indemnify and save harmless the City, its officers, agents and employees, pursuant to Paragraph 13, "Indemnification," from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the performance of work under this Agreement which infringes upon any patent, trademark or copyright protected by law.

**27. OWNERSHIP OF WORK PRODUCT:** All plans, drawings, reports, other submittals, and other documents submitted to the City or its authorized agents by Consultant shall become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit. Consultant shall not be liable for any damage which may result from any use of such documents for purposes other than those described in this Agreement.

**28. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

**A.** The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes and D.R.M.C. § 20-90 and the Consultant is liable for any violations as provided in said statute and ordinance.

**B.** The Consultant certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in C.R.S. § 8 17.5-101(3.7), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**C.** The Consultant also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to the Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it has complied with all federal requirements regarding the use of the E-Verify program, including, by way of example, requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subcontractor or subconsultant performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three days. The Consultant will also then terminate such subcontractor or subconsultant if within three days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of C.R.S. § 8-17.5-102(5), or the City Auditor under authority of D.R.M.C. § 20-90.3.

**29. SEVERABILITY:** In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected.

**30. NO THIRD PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Consultant that sub-consultants and any other persons other than the City or the Consultant receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

**31. ADVERTISING AND PUBLIC DISCLOSURES:** The Consultant shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager, which will not be unreasonably withheld. Any oral presentation or written materials related to Denver International Airport shall include only presentation materials, work product, designs, renderings and technical data which have been accepted by the City. The Manager shall be notified in advance of the date and time of any such presentations. Nothing herein, however, shall preclude the transmittal of any information to officials of the City, including without limitation, the

Mayor, the Manager of Aviation, members of City Council, or the Auditor.

**32. COLORADO OPEN RECORDS ACT:** Consultant acknowledges that the City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and Consultant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Consultant asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments and other documents incorporated into this Agreement by reference, all materials, records and information provided by Consultant to the City shall be considered confidential by the City only to the extent provided in the Open Records Act, and Consultant agrees that any disclosure of information by the City consistent with the provisions of the Open Records Act shall result in no liability of the City.

**33. SENSITIVE SECURITY INFORMATION:** Consultant acknowledges that, in the course of performing its work under this Agreement, that it may be given access to Sensitive Security Information (“SSI”), as that material is described in federal regulations, 49 C.F.R. part 1520. Consultant specifically agrees to comply with all requirements of the applicable federal regulations and DIA Standard Policy and Procedure 6003. Consultant understands any questions it may have regarding its obligations with respect to SSI must be referred to the Deputy Manager or his or her designated representative.

**34. ENTIRE AGREEMENT:** The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Manager, shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.

**35. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to and shall not become effective or binding on the City until full execution by all signatories of the City and County of Denver.

**36. CITY EXECUTION OF AGREEMENT:**

This Agreement is expressly subject to, and shall not become effective or binding on the City, until it is fully executed by all signatories of the City and County of Denver. This Agreement may be signed electronically by either party in the manner specified by the City.

[END OF PAGE]

[APPENDIX, SIGNATURE PAGES, AND EXHIBITS FOLLOW]

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Consultant, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 7. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_


By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: PLANE-201414840-00

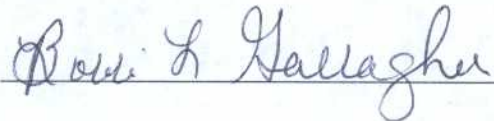
Contractor Name: BRUEL & KJAER EMS, INC.

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

Name: Jaime M. Locquiao  
(please print)

Title: OPERATIONS MANAGER  
(please print)

ATTEST: [if required]

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

Name: Bobbi L. Gallagher  
(please print)

Title: Office Manager  
(please print)



BRUEL & KJAER EMS INC.  
NOISEOFFICE SERVICES AGREEMENT

EXHIBIT A

SCOPE OF WORK



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## 1 Definitions

Term	Definition
Agreement	this Noise Office Services Agreement.
Effective Date	the date that this Agreement comes into effect as specified in Main Agreement
Radar Activation Date	the date that System is connected to subscribed radar data feed
Hosted Systems and Services	the Customer equipment and applications listed in the table "System Hosting Services" in Schedule D.3. and related services described in Section 7.4
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 organization 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. Where there are multiple descriptions of a given specification, the most demanding requirement shall apply, unless Customer selects a less demanding requirement.
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
Supplier Software	software listed in Schedule C.3 as having 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 5.2
System	the hardware, software, on site spares, subscribed applications and subscribed data listed in Schedule C:
System Component	any one of the items comprising the System.
System Upgrade	hardware and software upgrade of the System
Third Party Software	software listed in Schedule C.3 as having an author other than 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	Between 7.30am and 5.30pm local time in the main Monday through Friday inclusive, excluding local public holidays in Denver, Colorado.
Working Hours	between 8:30am and 5:30pm local time in the main place of business of Customer on any Working Day.

## **2 Term, Termination and Renewal**

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- a Main Body of the Agreement

## **3 Contract Administration**

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

## **4 Scope of Work**

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- a Supplier shall provide all services described in this agreement according to the applicable Service Levels defined in Schedule E:.
- 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.

## **5 Service Management**

---

### *5.1 Service Reporting:*

- a Schedule B identifies the current SDM. In the event Supplier determines there is a need to replace the SDM, Supplier shall advise Customer of that need, propose a new SDM, and provide Customer with information supporting the proposal. That supporting information shall include at least the proposed SDM's name, office location, and relevant qualifications and experience. The Customer has the right to review and approve the proposed SDM.
- b No later than 15 Working Days after each customer visit as described in clause 5.3, the Supplier shall provide a quarterly report on the utilization of the Services provided under this Agreement and the performance against the Service Levels defined in Schedule E:.

### *5.2 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 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 Supplier will reply in accordance with the response times specified in Schedule E:. The reply shall acknowledge the request and identify the unique ticket number that is to be used in all future communication concerning this request.

### 5.3 *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.

### 5.4 *North America User Forum*

- a On request from Customer, Supplier will provide the number of tickets specified in Schedule D.2 each year of this Agreement to any User Forum.
- b Customer shall be responsible for the travel expenses (transportation, lodging etc.) and meal expenses (except for meals provided as part of the official User Forum activities) of its attendees at User Forums.

## 6 **Maintenance Services**

---

### 6.1 *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 NMT 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 5.2 above.
- d Supplier will enter this information into the Supplier's ticket management system and reply in accordance with the response times specified in Schedule E.1. The reply shall identify 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 Supplier requests, 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 specified in Schedule E:.
- h Supplier will use best efforts to resolve all faults and requests so as to meet response and resolution times specified in Schedule E.1, 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 specified in Schedule E: 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.

## 6.2 *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 and patches to Supplier Software when they are made available for general distribution. Customer may or may not choose to install the upgrades and patches. When providing notice of the availability of upgrades and patches, Supplier shall notify Customer of any manner in which a given upgrade or patch will change the performance or functionality of the Customer's existing software installation.
- 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 6.2.e and the rates applicable for that work shall be as defined in Schedule F.4.
- 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. Supplier will provide at least one calendar year of notice prior to ceasing support of any version of Supplier Software.
- h Nothing in this Clause 6.2 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 11.

## 6.3 *Hardware Repair*

- a At Customer's option, System hardware defined in Schedule C.1 requiring physical repair will be returned to Supplier for repair.
- b 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.
- c Supplier shall repair or replace the item(s) as authorized by Customer and return the item(s) to Customer at Customer's expense.
- d Customer shall be responsible for re-installing the item(s) according to instructions from Supplier.

## 6.4 *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, except communications solely within the remote Supplier-provided and -supported Hosted System installation.
  - (iii) Faults caused by abnormal events, such as vandalism, lightning strikes and damage outside of

Supplier's control, except events solely affecting Supplier-provided and -supported Hosted System components and services.

## **7 System Management Services**

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### *7.1 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 is not the Responsible Party.

### *7.2 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 with Customer's consent. Supplier may also carry out system administration tasks outside of those hours.

### *7.3 Optional Periodic Hardware Services*

- a At Customer's option, Supplier shall provide hardware services as defined in, and at the frequency stated in, Schedule D.5 Optional Periodic Hardware Services. These services are not covered by the Base Services Fees specified in Section F.2.
- 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. This report is not covered by the Base Services Fees specified in Section F.3.

### *7.4 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 as specified in Clause 5.1 and also shall make recommendations on any actions or upgrades which might be necessary to improve or secure performance of the Hosted Systems.

### *7.5 Backup and Restoration*

- a The responsibility and frequency of system backup is stated in Schedule D.8.
- b In the event of complete or partial system failure, Supplier will restore the System from the latest available system backup.

## **8 Information Management Services**

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### *8.1 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. The log shall identify any time-perishable data that are permanently lost as a result any system failure, and shall identify the responsible factor(s).

## 8.2 *Optional Report Production Services*

- a At Customer's option, Supplier shall provide report production services as defined in, and at the frequency stated in, Schedule D.7 Report Production Services. These services are not covered by the Base Services Fees specified in Section F.2F.2.

## 9 **Subscription Services**

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### 9.1 *Optional Application Subscriptions*

- a At Customer's option, Supplier will provide the Subscribed Application specified in Schedule C.5 to Customer according to the Specifications and according to the Service Levels specified in Schedule E. These services are not covered by the Base Services Fees specified in Section F.2.
- b For the term of this Agreement, Customer will have a non-exclusive right to use the Subscribed Application subject to any limitation on user numbers or locations specified in Schedule C.5 Optional Application Subscription.
- c Subscribed Applications remain the exclusive property of Supplier.
- d Customer will not use, or cause others to use, the Subscribed Application 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 Application.
- 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 Application.
- g Due to the highly visual nature of the user interfaces, the Subscribed Application may not be accessible to individuals with certain disabilities. Customer hereby indemnifies Supplier 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 the Subscribed Application discriminates against an individual on the grounds of that individual's disability.

### 9.2 *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 that is resident in the Customer's system 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.
- g Fees for radar data are payable from the Radar Activation Date.

### 9.3 *Reference Data*

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



## 10 Additional Services

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- 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.4.

## 11 New Modules

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- 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.4.
- 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).

## 12 Obsolescence

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- a Supplier may undertake a review of the System 5 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.

## 13 Customer Obligations

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### 13.1 *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 Brüel & Kjær End User License Agreement.

### 13.2 *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.

### 13.3 *Physical and Electronic Access:*

- a Customer shall maintain a continuous connection to the internet for the system and capable of establishing a secure virtual private network between the system and Supplier's Operations Center. 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.
- 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.

## **14 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.

## **15 Payment and Charges**

---

### *15.1 Payment Terms*

- a Customer shall pay to Supplier the Agreement shall be paid in USD to Supplier's bank account as defined in Schedule B.
- b 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 Warranties**

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- a Main Body of the Agreement

## **17 Limitation of Liability and Indemnities**

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- a Main Body of the Agreement

## **18 General Terms and Conditions**

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### *18.1 Contract Variation Procedures*

- a Either Supplier or Customer may propose alterations, additions or omissions to this Agreement.
- b Amendments to the terms and conditions of the Agreement shall be agreed in writing between the parties.
- c Where Customer requires a variation to the Agreement, it shall notify Supplier in writing of the nature of the variation it seeks, and Supplier shall as soon as possible and within 30 days of receipt, forward to Customer a formal Contract Variation Proposal identifying attendant price and schedule variations.
- d Where Supplier requires a variation to the Agreement, it shall notify Customer in writing of the nature of the variation it seeks, and send a formal Contract Variation Proposal identifying attendant price and schedule variations.

- e Contract Variation Proposals shall become effective when formally accepted in writing by duly authorised officers of both Supplier and Customer. Until then, the Agreement shall remain unaltered.
- f Supplier shall not be liable for any additional work undertaken or expenditure incurred by Customer in relation to the variation of this Agreement which has not been authorised pursuant to this procedure.
- g Agreement to a Contract Variation Proposal shall not be unreasonably withheld by either party.

## **19 Notices**

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- a Main Body of the Agreement

## **20 Execution**

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- a Main Body of the Agreement

## 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 specific System Elements in the Schedules.

Service Line Item	Clause	Schedule(s)	Status
Service Management			
• Service Reporting	5.1	B	Included
• System Support	5.2	B, E.1	Included
• Customer Visits	5.3	D.1	Included
• User Forum	5.4	D.2	Included
Maintenance Services			
• Fault Management	6.1	E.1	Included
• Software Upgrades and Patches	6.2	C.3	Included
• Hardware Repair	6.3	C.1	Included
Technology Management Services			
• System Monitoring	7.1	C	Included
• System Administration	7.2	D.4	Included
• Periodic Hardware Service	7.3	D.5	Optional
• System Hosting	7.4	D.3	Included
• Backup and Restoration	7.5	D.8	Included
Information Management Services			
• Data Processing	8.1	D.6	Included
• Report Production	8.2	D.7	Optional
Subscription Services			
• Application Subscription	9.1	C.5	Included
• Data Subscription	9.2	C.4	Included
• Reference Data	9.2f	C.6	Not Included
Additional Services			
• Additional Services	10		Optional

## Schedule B: Contacts

Supplier Contacts		
<b>Formal Notices</b>	Name	Vice President
	Address	Bruel & Kjaer EMS Inc 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825
	Telephone	+1 916 265 7707
	Fax	+1 916 265 7719
	Email	cms@bksv.com
<b>Routine and operational communications</b>	Name	Sean Tanner or replacement Service Delivery Manager as approved by Customer pursuant to Section 5.1a
	Address	Bruel & Kjaer EMS Inc 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825
	Telephone	+1 916 265 7704
	Fax	+1 916 265 7719
	Email	cms@bksv.com
<b>Suppliers Bank Account</b>	Account Name	Bruel & Kjaer EMS Inc
	Account Number	+1 921 258 885
	Bank	JPMorgan Chase Bank, N.A.
	Bank Address	Chicago, IL (No Street Address needed) Routing Number 071000013
<b>Customer Support Center</b>	Telephone	+1 866 583 0280 +61 3 9508 4930
	Address	Level 14, 409 St Kilda Road Melbourne VIC 3004 Australia
	Fax	+61 3 9500 1191
	Email Support Requests	cms@bksv.com
Customer Contacts		
<b>Formal Notices</b>	Name	Mr. Mike McKee or contact Noise Abatement Manager
	Address	Denver International Airport 8500 Pena Boulevard, Denver, Colorado 80249
	Telephone	+1 303-342-2361
	Fax	+ 303-342-2366
	Email	Mike.McKee@diadenver.net
<b>Routine and operational communications</b>	Name	Mr. Mike McKee or contact Noise Abatement Manager
	Address	Denver International Airport 8500 Pena Boulevard, Denver, Colorado 80249
	Telephone	+1 303-342-2361

**Customer Contacts**

	Fax	+1 303-342-2366
	Email	Mike.McKee@diadenver.net
<b>Address for Invoices</b>	Name	Mr. Mike McKee or contact Noise Abatement Manager
	Address	Denver International Airport 8500 Pena Boulevard, Denver, Colorado 80249
	Telephone	+1 303-342-2361
	Fax	+1 303-342-2366
	eMail	Mike.McKee@diadenver.net

## Schedule C: System Elements

### C.1 Hardware

Type	Description	Manufacturer	Model	Serial#	Location / Notes	Repair Type
<b>DEN NMTs</b>						
1	Noise Monitoring Terminal	Brüel & Kjær	3639-C		11990 Gun Club Rd	
2	Noise Monitoring Terminal	Brüel & Kjær	3639-C		13420 Gun Club Rd	
3	Noise Monitoring Terminal	Brüel & Kjær	3639-C		152nd & Harvest Mile Rd	
5	Noise Monitoring Terminal	Brüel & Kjær	3639-C		104th & Manilla Rd	
6	Noise Monitoring Terminal	Brüel & Kjær	3639-C		N of 88th on Manila Rd	
7	Noise Monitoring Terminal	Brüel & Kjær	3639-C		6401 Hudson Mile Rd	
8	Noise Monitoring Terminal	Brüel & Kjær	3639-C		27802 E 26th Ave	
9	Noise Monitoring Terminal	Brüel & Kjær	3639-C		Corner of BFI	
10	Noise Monitoring Terminal	Brüel & Kjær	3639-C		Barr Lake Nature Center	
11	Noise Monitoring Terminal	Brüel & Kjær	3639-C		16395 E 144th Ave	
12	Noise Monitoring Terminal	Brüel & Kjær	3639-C		1245 Brighton Dr	
13	Noise Monitoring Terminal	Brüel & Kjær	3639-C		440 Southern St	
14	Noise Monitoring Terminal	Brüel & Kjær	3639-C		136th & Garfield	
15	Noise Monitoring Terminal	Brüel & Kjær	3639-C		4445 123rd Ave	
16	Noise Monitoring Terminal	Brüel & Kjær	3639-C		1802 Truda Dr	
17	Noise Monitoring Terminal	Brüel & Kjær	3639-C		115th Cir & Birch	
18	Noise Monitoring Terminal	Brüel & Kjær	3639-C		10173 Steele	
19	Noise Monitoring Terminal	Brüel & Kjær	3639-C		9250 Aspen	
20	Noise Monitoring Terminal	Brüel & Kjær	3639-C		79th & Cleveland	

Type	Description	Manufacturer	Model	Serial#	Location / Notes	Repair Type
21	Noise Monitoring Terminal	Brüel & Kjær	3639-C		76th & Monaco	
22	Noise Monitoring Terminal	Brüel & Kjær	3639-C		61st & Kearney	
23	Noise Monitoring Terminal	Brüel & Kjær	3639-C		3104 Tucson (Park Lane)	
24	Noise Monitoring Terminal	Brüel & Kjær	3639-C		12702 E 2nd	
25	Noise Monitoring Terminal	Brüel & Kjær	3639-C		Community College	
26	Noise Monitoring Terminal	Brüel & Kjær	3639-C		Clyde Miller School	
28	Noise Monitoring Terminal	Brüel & Kjær	3639-C		12946.5 Haysmount	
29	Noise Monitoring Terminal	Brüel & Kjær	3639-C		21687.5 E 118th	
<b>DEN Solar</b>						
1	Solar Power Kit					
2	Solar Power Kit					
3	Solar Power Kit					
4	Solar Power Kit					
5	Solar Power Kit					

## C.2 Supplier Spare Parts (Not Included)

Type	Description	Manufacturer	Model	Serial#	Location / Notes	Repair Type
None						

## C.3 Software

Item	Author	License Number	User Count
ANOMS 8 Server Software	Bruel & Kjaer EMS Inc.		3
ANOMS System 8 Client	Bruel & Kjaer EMS Inc.		3
Office 2003 Professional	Microsoft		3
Windows Server 2003	Microsoft		1
MS Interix 2.2.	Microsoft		1
Oracle 9i	Oracle		1
Crystal Reports 11	Business Objects		3



#### C.4 Data Subscriptions

Type	Description of Data	Restrictions
Flight Data Feed - SRG	Aircraft position data derived from interface to radar data, fused and tracked as required, and correlated with plan data.	Data may be used as input to ANOMS application and optional WebTrak application.

#### C.5 Optional Application Subscription

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

#### C.6 Reference Data

Type	Description	Frequency
Map data	TeleAtlas	Annual
FAA Aircraft Register	FAA	Quarterly

## Schedule D: Service Elements

### D.1 Mandatory Customer Support Visits

Number of Visits per Year: Four (4)

Each site visit is for a maximum of two days in duration at 8 hours per day.

### D.2 North America User Forum Attendees

Number of included attendees at the North America User Forum per year: One (1)

### D.3 System Hosting Services

Hosted Item	Task Description
ANOMS Application	Provision of Customer's ANOMS 8 from Supplier data center, hosted on Supplier servers.

### D.4 System Administration Services

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

### D.5 Optional Periodic Hardware Services

Applies To	Task Description	Frequency
All Installed NMTs	(i) Perform visual inspection for problems / corrosion. (ii) Check operation on site. (iii) Calibration of the unit. (iv) Update of NMT firmware if necessary (v) Download and update of the configuration files (vi) Check of batteries (Note that replacement of NMT batteries is not included as part of this Service) (vii) Replacement of bird spikes and windshields as required (viii) Microphone silica gel desiccant to be replaced at each visit	Annually

## D.6 Data Processing Services

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

## D.7 Optional Report Production Services

Task	Task Description	Frequency
To be determined	To be provided by Supplier for additional fee(s) as mutually agreed upon by Customer and Supplier.	To be determined

## D.8 System Backup

Task	Task Description Responsible	Frequency
Backup of system software	Supplier	Weekly

## Schedule E: Service Levels

### E.1 Service Requests and Fault Resolution

Category	Description	Response	Resolution Time	Target Achievement
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 Working Hours	2 Working Days	95% of all tickets to meet target response times 85% of all tickets to meet target resolution times Measured over a one-year period
2: Major Fault	<ul style="list-style-type: none"> <li>Key function inoperable</li> <li>Noise monitor calibration error, where error is identified as Supplier responsibility</li> </ul>	8 Working Hours	5 Working Days	95% of all tickets to meet target response times Measured over a one-year period
3: Minor Fault	<ul style="list-style-type: none"> <li>Reproducible loss of functionality</li> </ul>	2 days	1 month	The target applies where more than one ticket fails to meet the target resolution time in any individual calendar month
3: 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	
3: Minor Fault	<ul style="list-style-type: none"> <li>Non-reproducible abnormalities</li> </ul>	2 days	Ticket closed within 1 month if abnormality not reproduced	
Request	<ul style="list-style-type: none"> <li>“How do I?” questions.</li> </ul>	1 day	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 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' notice and be less than 4 hours. Non-Application Outage is outages with ISPs and/or individual client workstations	96.0%
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 Data Service

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

## Schedule F: Term, Termination, and Service Fees

### F.1 Contract Term

Initial Term: Five (5) Years  
 Optional Extension: One (1) Year  
 Number of Optional Extensions: Up to two (2)

### F.2 Base Services Fees

Item	Due Date	Monthly (USD)	Annual (USD)
Year 1 Service (01 May 2014 – 30 Apr 2015)	On the Effective Date and every month thereafter	\$16,129	\$193,548
Year 2 Service (01 May 2015 – 30 Apr 2016)	On the first anniversary of Effective Date and every month thereafter	Monthly renewal rate to be equal to 1/12 of the annual renewal rate for each year determined based on annual indexation in accordance with Schedule <b>Error! Reference source not found.</b> F.4.	Annual renewal rate to be determined based on annual indexation in accordance with Schedule <b>Error! Reference source not found.</b> F.4.
Year 3 Service (01 May 2016 – 30 Apr 2017)	On the second anniversary of Effective Date and every month thereafter		
Year 4 Service (01 May 2017 – 30 Apr 2018)	On the third anniversary of Effective Date and every month thereafter		
Year 5 Service (01 May 2018 – 30 Apr 2019)	On the fourth anniversary of Effective Date and every month thereafter		
Year 6 Service OPTIONAL (01 May 2019 – 30 Apr 2020)	On the fifth anniversary of Effective Date and every month thereafter		
Year 7 Service OPTIONAL (01 May 2020 – 30 Apr 2021)	On the sixth anniversary of Effective Date and every month thereafter		

### F.3 Duties & Taxes

All fees are EXCLUSIVE of sales tax. Sales tax will be added to the above fees if applicable.

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

If Supplier meets Service Level Target Achievements specified in Schedule E.1 for Category 1 and 2 tickets for the full year starting on the Effective Date or for any succeeding year starting on the annual anniversary of the Effective Date, and if Supplier meets Service Level Target Achievements specified in Schedule E.1 for Category 3 tickets for nine months of any such year, then Supplier shall be entitled to increase the Service Fees on the anniversary of the Effective Date.

Such Service Fee increases are to be specified in writing to Customer and shall:

- (i) Be equal to the lesser of 3% or the Consumer Price Index for All Urban Consumers (CPI-U) for the Denver-Boulder-Greeley (Colorado) metropolitan area as reported by the U.S. Bureau of Labor Statistics (BLS) for the most recent annual reporting period
- (ii) Be calculated so that Adjusted Service Fee = Existing Service Fee x [1 + the percentage increase determined in subsection F.4(i)]

## F.5 Additional Service Fee Basis

Item	Amount
Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	190 per hour, such fee subject to annual increases as defined in Schedule F.4 above
Third Party software, hardware and services costs	At Cost plus 15%
Travel, accommodation, meals, disbursements and other expenses.	At Cost
New Modules added to The System: <ul style="list-style-type: none"><li>• Hardware</li><li>• Software</li></ul>	Annual Maintenance Fee: 12% of Hardware Price 12% of Module Licence Fee

## Schedule G: Special Clauses

### G.1 LT6 Files

- a Supplier shall create daily LT6 files and place them in an FTP account on the Hosted Server that contains the Customer ANOMS data.
- b Supplier shall provide Customer with secure FTP account access to those files, via a VPN tunnel, using a Supplier-defined username and password.

### G.2 North American User Forum Travel Expenses

- a One Customer representative may attend a User Forum in North America in lieu of one of the site visits defined in Clause 5.3.

### G.3 Optional Service – Full Hardware Support

On Customer Notice to Proceed for Full Hardware Support:

- a Supplier will conduct a one-time equipment inspection of the equipment listed in Schedule C.1 for \$7,000.
- b The one-time equipment inspection will provide a report to Customer for mandatory repairs and maintenance tasks required to each hardware element to be included in full hardware support. The Customer is responsible for completing these repairs and maintenance tasks, or alternatively, Supplier will provide a quote for the fee to complete the repairs and maintenance tasks.
- c Once the mandatory repairs and maintenance tasks for a particular hardware element have been completed, the Repair Type for that hardware element is amended as “On-Site Repair.” On-Site Repair means that Supplier is responsible for repairing or replacing the faulty equipment at Supplier’s cost, including all transport, preparation and installation costs.
- d Schedule A, row “Periodic Hardware Service” is amended to read “Included”, but only hardware items in Schedule C.1 with Repair Type “On-Site Repair” are covered under Periodic Hardware Service.
- e For hardware covered under Periodic Hardware Service, Supplier will include the support described in Section 8.3 for the hardware listed in Schedule C.1, subject to the note in Schedule G.2.1 below.
- f The Base Service Fees are increased by the following:

Additional Service	Due Date	Monthly (USD)	Annual (USD)
Year 1 Hardware Service (01 May 2014 – 30 Apr 2015)	On the Effective Date and every month thereafter	\$7,500	\$90,000
Year 2 Hardware Service (01 May 2015 – 30 Apr 2016)	On the first anniversary of Effective Date and every month thereafter	Monthly renewal rate to be equal to 1/12 of the annual renewal rate for each year determined based on annual indexation in accordance with Schedule <b>Error!</b> Reference source not found.F.4.	Annual renewal rate to be determined based on annual indexation in accordance with Schedule <b>Error!</b> Reference source not found.F.4.
Year 3 Hardware Service (01 May 2016 – 30 Apr 2017)	On the second anniversary of Effective Date and every month thereafter		
Year 4 Hardware Service (01 May 2017 – 30 Apr 2018)	On the third anniversary of Effective Date and every month thereafter		
Year 5 Hardware Service (01 May 2018 – 30 Apr 2019)	On the fourth anniversary of Effective Date and every month thereafter		
Year 6 Hardware Service OPTIONAL (01 May 2019 – 30 Apr 2020)	On the fifth anniversary of Effective Date and every month thereafter		



Year 7 Hardware Service OPTIONAL (01 May 2020 – 30 Apr 2021)	On the sixth anniversary of Effective Date and every month thereafter		
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- g In the event that this optional service does not commence on Effective Date, a pro-rata fee will be applied at receipt of Customer notice to proceed.

**G.3.1 Note on Solar Panel Kits**

Supplier is not responsible for the solar power kit design, and does not take responsibility that power will be sufficient in all weather, all year round.

For solar panel kits marked as “On-Site Repair”, Supplier will provide continuing maintenance services for:

- Solar Panel
- Mount
- Battery (checking only – not responsible for replacement)
- Din-rail
- Cables

**G.4 Optional Service – Third Party Radar Data**

On Customer Notice to Proceed for Third Party Radar Data:

- a Supplier will arrange for Third Party radar data to be supplied to the system and invoice Customer for Third Party radar data feed as follows

Item	Due Date	Fee (USD)	Notes
Third Party Data Setup Fee	Due on Customer notice to proceed or purchase order	\$8,725	One-time fee for setup services and up to 24 man-hours of support
Third Party Pro-Rata Data Service Fee	Due on Customer notice to proceed or purchase order	To be determined	One-time fee to align ARTS Gateway Data Fee payments with Effective Date
Third Party Data Service Fee	Payable monthly in advance in alignment with Schedule F.3 Base Services Fees OR Payable annually in advance in alignment with Schedule F.3 Base Services Fees	\$28,428 per year (\$2,369 per month)  OR \$27,600 per year	Supplier shall apply indexation to Service Fee in accordance with Schedule F.4.

- b Schedule C.4 is appended with the following

Type	Description of Data	Restrictions
Third Party Flight Data Feed	Aircraft position data derived from third party data provider, and correlated with plan data.	Data may be used as input to ANOMS and WebTrak applications.

**CITY AND COUNTY OF DENVER  
INSURANCE REQUIREMENTS FOR THE DEPARTMENT OF AVIATION**

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Certificate Holder Information:

CITY AND COUNTY OF DENVER  
Attn: Risk Management, Suite 8810  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

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**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES: 201414840 – ANOMS System Support**

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**I. MANDATORY COVERAGE**

**Colorado Workers' Compensation and Employer Liability Coverage**

**Coverage:** COLORADO Workers' Compensation

**Minimum Limits of Liability (In Thousands)**

WC Limits: \$100, \$500, \$100

And Employer's Liability Limits:

**Any Policy issued under this section must contain, include or provide for the following:**

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**Commercial General Liability Coverage**

**Coverage:** Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)

**Minimum Limits of Liability (In Thousands):**

Each Occurrence:	\$1,000
General Aggregate Limit:	\$2,000
Products-Completed Operations Aggregate Limit:	\$2,000
Personal & Advertising Injury:	\$1,000
Fire Damage Legal - Any one fire:	\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required
7. General Aggregate Limit Applies Per: Policy \_\_\_ Project \_\_\_ Location \_\_\_\_, if applicable

**Business Automobile Liability Coverage**

**Coverage:** Business Automobile Liability (coverage at least as broad as ISO form CA0001)

**Minimum Limits of Liability (In Thousands):** Combined Single Limit \$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

## **II. ADDITIONAL COVERAGE**

### **Umbrella Liability**

**Coverage:**

**Umbrella Liability, Non Restricted Area**

**Minimum Limits of Liability (In Thousands)**

Each Occurrence and aggregate

\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. **If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.**

### **Professional Liability only as applicable Information Technology Contracts**

**Coverage: Professional Liability including Cyber Liability for Errors and Omissions**

(If contract involves software development, computer consulting, website design/programming, multi-media designers, integrated computer system design, data management, and other computer service providers.)

**Minimum Limits of Liability (In Thousands)**

Per Claim

\$1,000

**Any Policy issued under this section must contain, include or provide for the following:**

1. The insurance shall provide coverage for the following risks:
  - a. Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form
  - b. Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure
  - c. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software, and programs thereon.
2. Policies written on a claims-made basis must remain in full force and effect in accordance with CRS 13-80-104. The Insured warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Contract is completed.
3. Any cancellation notice required herein may be provided by either certified or regular mail.
4. The policy shall be endorsed to include the City, its elected officials, officers and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Insured
5. Coverage must include advertising injury, personal injury (including invasion of privacy) and intellectual property offenses related to internet.

### III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein

- All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
- With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
- The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
- Advice of renewal is required.
- All insurance companies issuing policies hereunder must carry at least an A -VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
- Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
- No changes, modifications or interlineations on this document shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

### NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, or sustain a material change in coverage adverse to the City, the issuing company or its authorized Agent shall give notice to the Department of Aviation in accordance with policy provisions.