

Honorable Mayor and Members
of the City Council
Torrance City Hall
Torrance, California

Members of the City Council:

SUBJECT: Community Development - Approval of a Noise Office Services Agreement with Lochard Corporation for the Airport Noise Monitoring System (ANOMS).

Expenditure: \$82,296 Licensing and Maintenance, Noise Office and Technology Management for the first year.

RECOMMENDATION

Recommendation of the Community Development Director that Your Honorable Body:

1. Approve a Noise Office Services Agreement with Lochard Corporation for licensing and maintenance of the ANOMS Noise Abatement System, with the addition of Noise Office Services and Technology Management Modules for an initial three-year period and two optional extension years for a total of five years at a cost of \$82,296 for the first year with a potential 3% increase for the second through fifth years.
2. Authorize the Mayor to execute and the City Clerk to attest to said Agreement on behalf of the City.

Funding

Funding is available in the Airport Noise Abatement program operating budget.

BACKGROUND AND ANALYSIS

The Airport Noise Abatement program began an upgrade of the 20 year old Airport Noise Monitoring System in 2005, including replacement of outdated monitors and microphones throughout the community adjacent to the airport, with the addition of a new monitor location in Walteria Park, specifically designed to monitor helicopter noise. The new system is fully digital, with computerized data storage and access and includes a camera system designed to assist in identifying aircraft in the run-up area. The system upgrades were completed in 2007, and have proven to be very satisfactory.

This is a request for a renewal of an existing contract for licensing and maintenance for the Airport Noise Monitoring system, a highly specialized program provided under exclusive license by the Lochard Corporation. As did the previous contract, the new contract has a three-year term, with the ability to then continue for two additional one-year terms, and the option of terminating with written notice.

The basic contract, which covers licensing for the software, maintenance services, basic SkyTrak (radar) subscription and technology management, remains at a cost of \$48,720 per year. With the new contract however, the possibility of additional modules has been offered. These new modules would perform some of the more labor intensive tasks that staff is currently performing, making the program more efficient and saving staff time. The new modules are funded for a period of one year, during which time staff will assess the effectiveness of the new modules and the amount of time saved. As staff analyzes the effectiveness of the new programs, we will re-instate some of our other Noise Abatement programs, such as the Helicopter "Fly Friendly" program, in response to community requests. If the modules are found to be effective, staff will request additional funding from the Airport Fund for the following years to cover the costs of maintaining the new computer modules and assess the current staffing levels and programs offered for possible re-assignment. Should the value added to the Noise Abatement Program be found to be insufficient, the modules will be discontinued after the first year. The modules are as follows:

Noise Office Services (Option A): This module would provide identification of noise violations, investigation, data entry for both violations and complaints, production of violation letters, and would have a report with these items available daily for Noise Abatement staff to act upon at a cost of \$24,576 per year. Currently, with a single employee assigned to the Noise Abatement Center half time, we are only able to perform the basic task of identifying violating aircraft and notifying them; addition of this module would allow staff to have more time to interact with pilots and the public and respond to various issues and requests for service and information that regularly come into the Noise Abatement Office.

Data/Technology Noise Office (Option B): This module provides a higher level of technological support, including local subcontractors providing first level diagnostics for issues not only with the software but in the field. In addition, an enhanced radar service would be provided. This would be at a yearly cost of \$9,000. Currently, staff provides the first level diagnostics, particularly in the field, which requires trips to the noise monitors and coordination with the Lochard office to ascertain what problems exist. As with the Noise Office Services module, this would save staff time that could then be allocated to better serving the public.

WebTrak: This module would provide a web-based program allowing the public close to real-time access to radar data for flights to and from Torrance Airport as well as those traversing our airspace. Information would include flight paths, altitude and any information gathered by our noise monitors as the aircraft passes overhead. In addition, complaints could be filed by the public via the WebTrak program and would

automatically be entered into our ANOMS data base. The WebTrak subscription would have a yearly cost of \$14,400.

While we currently have radar capability, our current system does not track altitude, correlate flights with our noise monitors nor does it provide the level of public interaction available with WebTrak.

Staff recommends approval of the Noise Office Service Agreement with Lochard Corporation with the addition of Options A and B, for a yearly cost of \$82,296, leaving the option of adding WebTrak technology at a later date open.

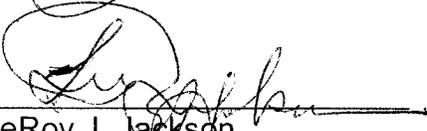
Respectfully submitted,

JEFFERY W. GIBSON
Community Development Director

By 
Linda Cessna
Deputy Community Development Director

CONCUR:


Jeffery W. Gibson
Community Development Director


LeRoy J. Jackson
City Manager

Attachments:

- A. Airport Noise System Licensing and Maintenance Agreement with Lochard Corporation



NOISEOFFICE SERVICES AGREEMENT

BETWEEN

LOCHARD CORPORATION

AND

THE CITY OF TORRANCE

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1 PREAMBLE

This agreement made as of the 1st Day of July 2010 (the "Effective Date") is between

Lochard Corporation, a company incorporated under the laws of the State of Delaware relating to companies and having its registered office at 1050 Fulton Ave, Suite 213, Sacramento, CA 95825 (hereinafter called "Supplier")

and

The City of Torrance, an incorporated City under the laws of California and having its office at 3031 Torrance Blvd, Torrance CA 90509-2970 (hereinafter called "Customer")

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

2 DEFINITIONS

Term	Definition
Agreement	this Noise Office Services Agreement.
Effective Date	the date that this Agreement comes into effect as specified in Clause 1.
Hosted Systems	the Customer equipment and applications listed in the table "System Hosting Services" in Schedule .
NMT	Noise Monitoring Terminal
Prescribed Terms	terms and conditions and warranties implied by law in contracts for the supply of goods or services.
Reference Data	the list of reference information shown Schedule C.6
Responsible Party	the person(s) or organisation responsible to address a specific issue of fault with the System. This could be a Customer contact or, depending on the scope of the Services, it could be a Supplier contact or a third party contact.
SDM	the Supplier-appointed person assigned to act as a single point of contact for matters relating to the provision of the Services.
Service Fees	the fees specified in Schedule F;
Service Levels	the performance levels defined in Schedule E;
Services	the services provided by Supplier under this Agreement.
Special Clauses	the obligations and liabilities defined in Schedule G:

Term	Definition
Specifications	the manuals, system descriptions or other published documentation describing the functionality and performance of the Supplier Hardware, Supplier Software, Subscribed Applications, or Subscribed Data.
Subscribed Applications	the list of applications listed in Schedule C.5
Subscribed Data	the list of data services listed in Schedule C.4
Supplier Software	software listed in Schedule C.3 as having Lochard or Brüel and Kjær as the author.
Supplier Spare Parts	the list of System components shown in Schedule C.2
Support Request	a request in writing from Customer to Supplier for work to be performed under this Agreement as defined and in the form described in Clause 6.2
System	the hardware, software, on site spares, subscribed applications and subscribed data listed in Schedule C:
System Component	one of the items comprising the System.
Termination Services	The services described in Schedule F.2.
Third Party Software	software listed in Schedule C.3 as having an author other than Lochard or Brüel and Kjær.
User Forum	user group meeting, which Supplier may organize from time to time, to discuss technical issues related to airport noise and the use of Supplier products and services.
Working Day	Monday through Friday inclusive, excluding local public holidays in the main place of business of Customer.
Working Hours	between 8:30am and 5:30pm local time in the main place of business of Customer on any Working Day.

3 TERM, TERMINATION AND RENEWAL

- a This Agreement shall commence on the Effective Date and continue for the initial term specified in Schedule F.1 Contract Term and any extension periods, which may be requested by Customer according to this Clause 3.
- b Customer may extend this agreement for an additional period by notifying Supplier in writing, no later than 30 days prior to the end of the current term. The length of the extension period and the number of times that the customer may extend this Agreement are as specified in Schedule F.1 Contract Term.

- c If Customer does not advise that it wishes to extend the agreement as per the above clause then, on written request from Customer, Supplier may continue to provide services on a month-to-month basis for a Service Fee 15% higher than the equivalent fee which applied prior to the end of the Agreement.
- d At the conclusion of this Agreement, and providing that a request for the Termination Services is received in writing from Customer at least 30 days prior to the end of this Agreement, Supplier will provide the Termination Services.

4 CONTRACT ADMINISTRATION

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

5 SCOPE OF WORK

- a The Services shall be provided according to the applicable Service Levels.
- b The Services apply only to the System. Correct operation of the System may depend on correct operation of other systems (including data feeds, power supplies, and communication links), which are the responsibilities of Customer. Supplier's obligations under this Agreement shall be excused if, and to the extent that, the System does not work correctly as a result of the failure of these other systems.
- c When Customer becomes aware of an interruption to a system or service which is likely to cause interruption to the System or Services which are the subject of this Agreement, Customer shall notify Supplier where reasonably practical to do so:
 - (i) Seven (7) calendar days in advance of any planned outage; and
 - (ii) Within four (4) working hours of an unplanned outage.
- d Supplier's obligations under this agreement shall be excused if, and to the extent that, Customer fails to deliver the obligations listed in Clause 13, below.

6 SERVICE MANAGEMENT

6.1 SERVICE REPORTING:

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

against the Service Levels.

6.2 SYSTEM SUPPORT

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

6.3 CUSTOMER VISITS

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

6.4 USER FORUM

- a On request from Customer, Supplier will provide the number of tickets

specified in Schedule D.2 each year of this Agreement to any User Forum.

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

7 MAINTENANCE SERVICES

7.1 FAULT MANAGEMENT

- a Supplier will rectify faults in the System during the term of this agreement and as required to return the System to operating within substantial conformity with the Specifications.
- b If a fault is detected or suspected, Customer shall perform initial fault finding and diagnosis prior to contacting Supplier. Such fault finding and diagnosis may require Customer staff to travel to remote equipment sites to assess local conditions and to reboot/restart equipment as necessary.
- c All faults shall be advised to Supplier by email or by fax to the contact details for Customer Support listed in Schedule B; and in the form described in Clause 6.2 above.
- d Supplier will enter this information into the Supplier's ticket management system and a reply will be sent identifying the unique ticket number that is to be used in all future communication concerning this fault report.
- e Customer shall assist Supplier in diagnosing the fault by, if requested, supplying evidence of the fault such as listings of output, photographs, or other data. Such evidence may also include information about and from equipment other than the System.
- f If requested, Customer shall explain how the fault prevents substantial conformity of the System with the Specifications.
- g Supplier shall carry out remedial work either remotely or on Customer locations at Supplier's discretion and in line with the Service Levels.
- h Supplier will resolve all faults and requests according to the Service Levels with a minimum disruption to Customer's operation.
- i Supplier will not be required to carry out remedial work or to carry our remedial work in accordance with the Service Levels if:
 - (i) It has not received a Support Request;
 - (ii) Customer has changed the configuration of the System and this has caused, or contributed to the cause of, the fault;
 - (iii) The fault is caused by incorrect Customer operation of the

System or by a failure in consumable equipment.

7.2 SOFTWARE UPGRADES AND PATCHES

- a Customer shall be entitled, at no additional license fee, to patches and upgrades to the Supplier Software that Supplier shall, from time to time, develop and make available where such patches and upgrades relate to features of the Supplier Software currently supplied and/or licensed to Customer.
- b Supplier shall notify Customer of upgrades to Supplier Software when they are made available for general distribution. Customer may or may not choose to install the upgrade.
- c Where an upgrade to Supplier Software requires an upgrade to Third Party Software, Supplier will advise Customer accordingly and will supply, at no additional license fee, the required upgrades to Third Party Software.
- d The annual service fee payable under this Agreement will not be increased as a result of a decision by Customer to apply an upgrade to the Supplier Software.
- e Customer acknowledges that the application of an upgrade to Supplier Software or Third Party Software may require engineering effort, additional hardware, travel expenses, or end user training and that, unless specified elsewhere in this Agreement, costs associated with the provision of these items are not included in the scope of this Agreement.
- f On request from Customer, Supplier shall provide a quotation for the works described in Clause 7.2.e above and the rates applicable for that work shall be as defined in Schedule 0.
- g Supplier may declare a particular upgrade or set of upgrades to Supplier Software to be a new general release of the Supplier Software. Supplier reserves the right to cease supporting versions of Supplier Software that are more than two general releases older than the current general release or only to offer such support at increased service fees.
- h Nothing in this Clause 7.2 shall imply that Customer is entitled to any software except the Supplier Software. In particular, Supplier may provide additional functionality as a new, and separately licensable, module of the Supplier Software, in which case the new module may be offered to Customer as defined in Clause 12.

7.3 HARDWARE REPAIR

- a The System of hardware requiring physical repair will be repaired by

return of the items to Supplier for repair unless explicitly stated otherwise.

- b Supplier shall determine whether, in order to deliver the Services, it is necessary to return a System Component or part(s) of a System Component.
- c If requested by Supplier, Customer shall securely and safely pack and dispatch such item(s) to the depot nominated by Supplier for repair or replacement and shall pay for freight and insurance to the nominated depot premises.
- d Supplier shall repair or replace the item(s) according to the Service Levels and shall return the item(s) to Customer at Suppliers expense.
- e Unless otherwise specified in this Agreement, Customer shall be responsible for re-installing the item(s) according the instructions from Supplier.

7.4 SPECIFIC EXCLUSIONS

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

8 SYSTEM MANAGEMENT SERVICES

8.1 SYSTEM MONITORING

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

8.2 SYSTEM ADMINISTRATION

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

system administration tasks outside of those hours by mutual agreement.

8.3 PERIODIC HARDWARE SERVICES

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

8.4 SUPPLIER SPARES SERVICE

- a Supplier shall provide the Supplier Spare Parts at Suppliers expense, to be located on Customer premises and available to be used in fault rectification as required.
- b Supplier shall inspect the Supplier Spare Parts during visits to Customer site to ensure that they can be utilized when required. Supplier shall repair or replace any Supplier Spare Parts found to be faulty.
- c On termination of this Agreement, Customer shall return the Supplier Spare Parts.

8.5 SYSTEM HOSTING

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

9 INFORMATION MANAGEMENT SERVICES

9.1 DATA PROCESSING SERVICES

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

9.2 INFORMATION PRODUCTION SERVICES

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

10 SUBSCRIPTION SERVICES

10.1 APPLICATION SUBSCRIPTION

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

10.2 DATA SUBSCRIPTION

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

- e Supplier and Customer agree to abide by the terms of any third party data agreements that are required in order to provide the Subscribed Data.

10.3 REFERENCE DATA

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

11 PROFESSIONAL SERVICES

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

12 NEW MODULES

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

13 OBSOLESCENCE

- a Supplier may undertake a review of the System 3 years after the effective date of this Agreement and annually thereafter and may recommend the replacement of obsolete customer-owned equipment or customer-owned equipment not meeting specifications. Any such replacement recommendation shall be reasonable and justified.
- b If Customer does not accept the recommendations within 6 months, Supplier may cease to provide Services for the System or may only offer such support at increased service fees.

14 CUSTOMER OBLIGATIONS

14.1 RECORD KEEPING

- a Customer shall keep accurate records relating to the use and

performance of the system as may be requested by Supplier from time to time.

- b Customer shall permit Supplier to inspect these records at any time during Customer's normal business hours. Customer agrees to provide Supplier with a copy of all or any part of these records if so requested.

14.2 COMPLIANCE WITH LICENSE TERMS

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

14.3 STORAGE OF EQUIPMENT

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

14.4 PHYSICAL AND ELECTRONIC ACCESS:

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

by Supplier to meet its obligations under this Agreement.

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

15 CONFIDENTIALITY

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

16 PAYMENT AND CHARGES

16.1 PAYMENT TERMS

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

or equipment;

- (iv) damage to the property of Customer or Customer's agents, employees or contractors, which is not covered by insurance required to be provided by Supplier;
- (v) failure of Supplier to submit proper invoices with all required attachments and supporting documentation; or
- (vi) failure of Supplier to comply with any material provision of the Agreement Documents.

17 WARRANTIES

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

18 LIMITATION OF LIABILITY AND INDEMNITIES

- a Except as provided in Clauses 18.f, 18.g, and 18.h below, Supplier's maximum aggregate liability under or in connection with supply of Services under this Agreement whether arising in contract, tort

(including negligence) or otherwise, shall in no event exceed 100% of the total amount payable by Customer in respect of Services this Agreement and, in respect of Services continuing beyond one year, shall in no event exceed in any year 100% of the total amount payable by Customer in respect of Services in that year.

- b Supplier accepts no responsibility or liability for:
 - (i) any excessive delay by Customer in lodging a Support Request;
 - (ii) any loss or damage to, deterioration of, or faults in, The System to the extent attributable to an act or omission of Customer (including, but not limited to, damage from dropping or incorrect handling of the System Components, electrical damage from power interruptions or spikes to The System and data damage from power interruptions to The System);
- c Neither party shall be liable to the other party for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in tort (including negligence), contract or otherwise.
- d Any claim arising out of or in connection with this Agreement must be commenced against Supplier within one year of provision of the Services giving rise to the claim, and Supplier shall have no liability to Customer under or in connection with any claim commenced after such time.
- e Nothing in this Agreement shall exclude or limit the Supplier's liability to the extent that the same may not be excluded or limited as a matter of law.
- f Supplier shall indemnify, defend and hold harmless Customer, and its officials, commissioners, employees, and agents ("indemnified parties") from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, costs, expenses or liabilities, of any kind or nature whatsoever ("claims") which may be brought, made, filed against, imposed upon or sustained by the indemnified parties, or any of them alleging
 - (i) injury to or death of persons or damage to property, including property owned by or under the care and custody of Customer, and
 - (ii) that such injury, death or damages arises from or is attributable to or caused by the breach of this Agreement by Supplier, or the negligence or wilful misconduct of Supplier, its officers,

agents or employees, in connection with or pertaining to the Agreement.

- g Notwithstanding the foregoing indemnity, Supplier's maximum aggregate liability for property damage attributable to the Supplier's negligent acts or omissions shall in no event exceed \$5,000,000 and Supplier shall be under no liability to Customer for any loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill or for any indirect or consequential loss or damage of any kind, SAVE THAT nothing in this Agreement shall exclude or limit Supplier's liability to Customer for fraud, death or personal injury caused by the Supplier's negligence or any other liability to the extent that the same may not be excluded or limited as a matter of law.
- h The indemnity in favour of Customer herein will only apply if:
 - (i) Customer promptly notifies Supplier in writing of the claim;
 - (ii) Customer cooperates with Supplier in any defence and settlement (at the cost of Supplier); and
 - (iii) Customer grants Supplier sole authority to control any defence and any related settlement.

19 GENERAL TERMS AND CONDITIONS

19.1 CONTRACT VARIATION PROCEDURES

- a Either Supplier or Customer may propose alterations, additions or omissions to this Agreement.
- b Amendments to the terms and conditions of the Agreement shall be agreed in writing between the parties.
- c Where Customer requires a variation to the Agreement, it shall notify Supplier in writing of the nature of the variation it seeks, and Supplier shall as soon as possible and within 30 days of receipt, forward to Customer a formal Contract Variation Proposal identifying attendant price and schedule variations.
- d Where Supplier requires a variation to the Agreement, it shall notify Customer in writing of the nature of the variation it seeks, and send a formal Contract Variation Proposal identifying attendant price and schedule variations.
- e Contract Variation Proposals shall become effective when formally accepted in writing by duly authorised officers of both Supplier and Customer. Until then, the Agreement shall remain unaltered.

- f Supplier shall not be liable for any additional work undertaken or expenditure incurred by Customer in relation to the variation of this Agreement which has not been authorised pursuant to this procedure.
- g Agreement to a Contract Variation Proposal shall not be unreasonably withheld by either party.

19.2 NOTICES

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

19.3 RIGHT TO ASSURANCE.

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

19.4 TERMINATION

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

19.5 CUSTOMER DEFAULT

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

- (i) Any payment due to Supplier from Customer under this Agreement remains unpaid for a period of ninety (90) days except, if payment is not timely made for a reason for which Customer may withhold payment hereunder;
 - (ii) Customer is in breach of the whole or any material part of this Agreement and this breach is not remedied within thirty (30) days of written notice by Supplier; provided, however, if the breach is curable, but not capable of being cured within thirty (30) days, Supplier may not terminate the Agreement if Customer promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion;
 - (iii) Customer disposes of The System;
 - (iv) Customer becomes the subject of any bankruptcy proceedings, becomes insolvent, or enters into receivership;
- b In the event of termination in accordance with this clause Supplier may:
- (i) Repossess any of its equipment in the possession, control, or custody of Customer;
 - (ii) Retain any money paid;
 - (iii) Charge a reasonable sum for work performed for which no sum has previously been charged;
 - (iv) Be regarded as discharged from any further obligations under this Agreement;
 - (v) Pursue any alternative or additional remedies afforded by the law.
- c Customer shall not be entitled to a refund of any fees paid or accrued prior to the effective date of such termination.
- d Customer shall not be entitled to compensation for loss of earnings or damages.
- e Supplier may suspend service under this Agreement on notice in writing to Customer if any payment due under this Agreement remains unpaid for a period of ninety (90) days except, if payment is not timely made for a reason for which Customer may withhold payment hereunder.
- f In the event of a Customer default, Supplier shall be entitled to charge interest from the due date until the date of payment by Customer.
- g Supplier shall be entitled to a reinstatement fee equal to the amount

calculated by multiplying the Annual Maintenance Fee by percentage equal to the number of days in the period from when service is suspended until service is restored divided by 365.

19.6 SUPPLIER DEFAULT.

- a Supplier shall be in default under the Agreement if Supplier
 - (i) fails to fully, timely and faithfully perform any of its material obligations under the Agreement,
 - (ii) becomes insolvent or seeks relief in bankruptcy.
- b In the event of a default by Supplier, Customer may terminate the Agreement for cause by written notice to Supplier effective thirty (30) days after the date of such notice unless Supplier, within such thirty (30) day period, cures the default or provides evidence sufficient to prove to Customer's reasonable satisfaction that a default did not occur; provided, however, if the default is curable, but not capable of being cured within thirty (30) days, Customer may not terminate the Agreement if Supplier promptly commences the cure within such thirty (30) day period, and diligently pursues the cure to completion.

19.7 WAIVER

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

19.8 DISPUTE RESOLUTION

- a If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have

not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

- b Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- c If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; Customer and Supplier agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert.
- d The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session.
- e Customer and Supplier will share the costs of the mediator equally.
- f If any party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, any party may refer the claim or dispute to arbitration, in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. The arbitration process will be commenced by service by one party on the other of a written notice that the dispute is to be referred to arbitration. The parties will then participate in good faith in the arbitration. Unless otherwise agreed between the parties, the arbitrator will be nominated by the American Arbitration Association. Arbitration proceedings shall be held in California. The expenses and fees of any such arbitration proceedings shall be borne equally by the parties. The award of the arbitrator or arbitrators shall be final and binding upon the parties, and judgment upon any such award may be entered in any court having jurisdiction. Nothing in this Agreement shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary.

19.9 ASSIGNMENT

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

19.10 ENTIRE AGREEMENT

- a This Agreement constitutes the entire understanding between Supplier and Customer with respect to the subject matter hereof, and supersedes and extinguishes all prior statements, understandings and agreements between the parties with respect to the subject matter hereof, and all warranties and representations previously given, whether oral, written, or in any other form.
- b Supplier and Customer further agree that neither party places any reliance whatsoever on any representations, agreements, statements or understandings made prior to the Effective Date whether orally, in writing, or any other form, other than those which have been expressly incorporated in this Agreement.
- c No alterations or changes to this Agreement are valid unless they are in writing and signed by both parties in accordance with Clause 19.1.

19.11 FORCE MAJEURE

- a "Force Majeure" shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation, acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labour; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery
- b If, as a result of an event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Agreement:
 - (i) that party is to give the other party prompt notice of the relevant event of force majeure with reasonably full particulars and, in so far as known to it, the probable extent to which it will be unable to perform, or be delayed in performing, the relevant obligations;
 - (ii) the relevant obligations, other than an obligation to pay money, is suspended but only so far as, and for so long as, it is affected by the relevant event of force majeure; and
 - (iii) that party is to use all possible diligence to overcome or remove the relevant event of force majeure as quickly as possible.
- c Nothing in this Agreement shall require the affected party to:

- (i) settle any strike or other labour dispute on terms contrary to its wishes; or
 - (ii) contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- d Supplier may, with Customer's prior written consent, extend the time for completion of this Agreement and/or the Services.
- e The obligation of the affected party to perform its obligations, resumes as soon as it is no longer affected by the relevant event of force majeure.

19.12 RIGHTS

- a Any express statement of a right of either party under this Agreement is without prejudice to any other rights of that party either arising in law or expressly stated in this Agreement.

19.13 PRECEDENCE AND SEVERABILITY

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

19.14 GOVERNING LAW

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

19.15 INDEPENDENT CONTRACTOR

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

19.16 INTELLECTUAL PROPERTY

- a Customer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, software, source codes and other items relating thereto shall immediately

upon creation or performance vest in and shall be and remain the sole and exclusive property of Supplier and Customer shall acquire no right, title or interest in or to the same except as expressly stated in this Agreement.

- b The Supplier grants to Customer a revocable, non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for Customer to obtain and utilise the intended benefit of the Services.
- c All data and other information, other than intellectual property described above in whatever form or medium, compiled or prepared by Supplier in performing its services or furnished to Supplier by Customer shall be the property of Customer and Customer shall have the unrestricted right to use or disseminate same without payment of further compensation to Supplier, provided that any future use of such material or work product by Customer for other than the specific purpose intended by the Agreement shall be at Customer's sole risk and without liability to Supplier.
- d Copies of Supplier's work product may be retained by Supplier for its own records.
- e If any claim is made against Customer that the Services infringe the patent, copyright or other intellectual property rights subsisting in the country or countries where Customer is located of any third party, Supplier shall indemnify Customer against all losses, damages, costs and expenses awarded against, or incurred by, Customer in connection with the claim or paid, or agreed to be paid, by Customer in settlement of the claim provided that:
 - (i) Supplier is given full control of any proceedings or negotiations in connection with any such claim; and
 - (ii) Customer shall give Supplier all reasonable assistance for the purposes of any such proceedings or negotiations.

19.17 EMPLOYMENT PRACTICES

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

19.18 ADVERTISING.

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

19.19 No CONTINGENT FEES.

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

19.20 GRATUITIES.

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

19.21 INTERPRETATION.

- a The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.
- b The headings used in this Agreement are for ease of reference only and do not affect its meaning or interpretation.
- c A reference to a person includes a corporation, its successors and permitted assigns.
- d The singular includes the plural and vice versa unless the contrary intention appears.

e Words importing one gender shall include the other.

20 EXECUTION

IN WITNESS WHEREOF the parties hereto have executed the Agreement
 on the day of 2010

SIGNED for and on behalf
 Customer

SIGNED for and on behalf of
 Supplier

.....
 Signature of authorised
 representative

.....
 Signature of authorised
 representative

.....
 Name of authorised
 representative

.....
 Name of authorised
 representative

.....
 In the presence of

.....
 In the presence of

.....
 Printed name and title

.....
 Printed name and title

Schedule A: SUMMARY OF SERVICES PROVIDED

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

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

Schedule B: CONTACTS

Supplier Contacts		
Formal Notices	Name Address Telephone Fax eMail	Vice President Lochard Corporation 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825 +1 916 265 7709 +1 916 265 7719 cms@bksv.com
Routine and operational communications	Name Address Telephone Fax eMail	Service Delivery Manager Lochard Corporation 1050 Fulton Avenue, Suite 213 Sacramento, CA 95825 +1 916 265 7704 +1 916 265 7719 cms@bksv.com
Suppliers Bank Account	Account Name Account Number Bank Bank Address	Lochard Corporation 941214-3519 Bank of America 100 Federal St MA DE 10007A Boston, MA, 02102011
Customer Support Centre	Telephone Address Fax Email Requests	+1 866 583 0280 +61 3 9508 4930 69 Kooyong Road Caulfield North Victoria 3161 Australia +61 3 9500 1191 Support cms@bksv.com
Customer Contacts		
Formal Notices	Name Address Telephone Fax eMail	City of Torrance, Purchasing Office Attn: Xxxxx Xxxxx, Contract Administrator
Routine and operational communications	Name Address Telephone Fax eMail	Linda Cessna, Deputy Community Development Director City of Torrance 3031 Torrance Blvd, Torrance CA 90509-2970 +1 (310) 618-5930 +1 (310) 618-5922 Lcessna@torrnet.com
Address for Invoices	Name Address Telephone Fax	Linda Cessna, Deputy Community Development Director City of Torrance 3031 Torrance Blvd, Torrance CA 90509-2970 +1 (310) 618-5930 +1 (310) 618-5922

eMail

Lcessna@torrnet.com

Schedule C: SYSTEM ELEMENTS

C.1 HARDWARE

Type	Description	Manufacturer	Model	Serial #	Location
Server	Rover	Dell	Prolient DL320G3		Airport Noise Office
User Workstation		Dell	Dell Optiplex 280		Airport Noise Office
User Workstation		Dell	Dell Optiplex 280		City Hall
Logger	Digital Logger – 4 ch.	DLI	4 ch. digital logger		Airport Noise Office
NMT# 1	EMU	Brüel and Kjær	Type 2300MK II	0757	3920 W.235 St. (Lago Seco Park)
NMT# 2	EMU	Brüel and Kjær	Type 2300MK II	0758	3400 W. 229TH ST
NMT# 3	EMU	Brüel and Kjær	Type 2300MK II	0759	2580 W 234TH ST
NMT# 4	EMU	Brüel and Kjær	Type 2300MK II	0760	2245 W 243RD ST
NMT# 5	EMU	Brüel and Kjær	Type 2300MK II	0761	2416 W 251 ST
NMT# 6	EMU	Brüel and Kjær	Type 2300MK II	0762	3235 Whiffletree Ln (De Portola Park)
NMT# 7	EMU	Brüel and Kjær	Type 2300MK II	0763	3855 W.242 St (Walteria Park)
Weather Sensor NMT#1	Weather Sensor	Vaisala	WAC15	A161	3920 W.235 St. (Lago Seco Park)

C.2 SUPPLIER SPARES PARTS

Type	Description	Manufacturer	Model	Serial#	Location
None					

C.3 SOFTWARE

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

C.4 DATA SUBSCRIPTIONS

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

C.5 APPLICATION SUBSCRIPTIONS

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

C.6 REFERENCE DATA

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

Schedule D: SERVICE ELEMENTS

D.1 MANDATORY CUSTOMER SUPPORT VISITS

Number of Visits per Year: 4

D.2 USER FORUM ATTENDEES

Number of included User Forum Attendees per year: 1

D.3 SYSTEM HOSTING SERVICES

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

D.4 SYSTEM ADMINISTRATION SERVICES

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

D.5 PERIODIC HARDWARE SERVICES

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

D.6 DATA PROCESSING SERVICES

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

D.7 INFORMATION PRODUCTION SERVICES

Task	Task Description	Frequency
Violations and Complaints	(i) Violations data entry and investigation (ii) Complaints entry and investigation (iii) Generate letters to the public	Daily/Weekly

Task	Task Description	Frequency
	(iv) 1 (1) Ad Hoc report per year	

Schedule E: SERVICE LEVELS

E.1 SERVICE REQUESTS AND FAULT RESOLUTION

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

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

E.2 WEBTRAK SUBSCRIBED APPLICATION SERVICE

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

E.3 SRG SUBSCRIBED DATA SERVICE

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

E.4 SKYTRAK SUBSCRIBED DATA SERVICE

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

Schedule F: TERM, TERMINATION, AND SERVICE FEES
F.1 CONTRACT TERM

Initial Term: Three (3) Years
 Optional Extension: Twelve (12) Months
 Number of Optional Extensions: Two (2)

F.2 TERMINATION SERVICES

None

F.3 INITIAL SERVICE FEE

Item	Due Date	Quarterly (USD)	Annual (USD)
Service Management, Maintenance Services, SkyTrak subscription, and Technology management Services	On the effective date and every quarter thereafter	\$12,180	\$48,719
System Hosting services (Schedule D.3) and Information Production Services (Schedule D.7)		\$6,144	\$24,576
WebTrak		\$3,600	\$14,400
Technology Management/ SRG Enhanced Radar Data		\$2,250	\$9,000

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

On the anniversary of the Effective date and every year thereafter Supplier may increase each of the Service Fees listed above by 3%

F.5 ADDITIONAL SERVICE FEE BASIS

Item	Amount (USD)
Software Engineer, Customer Support, Consulting, Training, Programming, and other labour.	175.00 per hour, such fee subject to annual increases as defined in Clause 0 above
Third Party Software and hardware costs	At Cost plus 15%
Travel, accommodation, meals, disbursements and other expenses.	At Cost

New Modules added to The System:
Hardware
Software
System Updates (See Attachments:
Option A-C)

Annual Maintenance Fee:
12% of Hardware Price
12% of Module Licence Fee

Schedule G: SPECIAL CLAUSES**G.1 INSURANCE REQUIREMENTS**

- a. Supplier will take out and maintain during the period of this Agreement:
- (i) a comprehensive public liability policy to cover all sums which Supplier may become legally liable to pay as compensation consequent upon (a) death of, or bodily injury (including disease or illness) to any person; and (b) loss of, or damage to, property, arising out, or in connection with, this Agreement. The limit of liability provided by this comprehensive public liability policy must not be less than USD \$5 million, unless otherwise agreed by the parties;
 - (ii) insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers compensation or employer's liability, from any accident or injury to any person employed by Supplier in connection with the Services;
 - (iii) insurance for all insurable risks under a third party motor vehicle insurance policy in compliance with the laws of the relevant jurisdiction in which the Services are to be performed for and in respect of any vehicle used by Supplier in connection with the Agreement to cover all sums which we may become legally liable to pay arising out of the use of the relevant motor vehicle; and

G.2 AVAILABILITY OF FUNDS

- a. Customer's payment obligations are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to Supplier. Customer shall provide Supplier written notice of the failure of Customer to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit Customer to pay its obligations

G.3 RIGHT TO AUDIT.

- a. Supplier agrees that Customer or its nominated delegate shall have access to, and the right to audit, examine, or reproduce, any and all records of Supplier related to the performance under this Agreement. Supplier shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that Customer has brought to the attention of Supplier are resolved,

whichever is longer. Supplier agrees to refund to Customer any overpayments disclosed by any such audit.

- b. Supplier shall include the section above in any subcontractor agreements entered into in connection with this Agreement.

G.4 USER FORUM TRAVEL EXPENSES

- a. One Customer representative may attend a User Forum in North America in lieu of one of the visits defined in Clause 6.3, and Supplier will be responsible for the cost of transportation, lodging, and group functions hosted by Supplier. Customer will be responsible for all other costs, including meals and incidental expenses.

OPTION A
Torrance Airport

The Torrance Airport has a requirement to monitor and manage airport noise utilizing the Airport Noise Monitoring System (ANOMS) provided by the Lochard Corporation and operated part time by the Environmental Quality Officer.

It is proposed that the existing Database/Reports management and ANOMS software operations be assigned to the Supplier to accomplish, leaving the employee to do the face to face discussions with the community and pilots and to concentrate their time to their community relations positions. Lochard is proposing the following.

Lochard to provide Database and Reporting Noise Office Services to include:

- Violations data entry and investigation
- Complaints entry and investigation
- Generate letters to the public
- 1 (1) Ad Hoc report per year

Total Monthly subscription to Noise Office Services \$2,048.00

FREQUENCY: Daily/ One report per year. The Torrance staff will provide the data and reporting requirements and the published services and reporting with be available per schedule.

TERMS, CONDITIONS & RESPONSIBILITIES: This option is valid for a period of 90 days from the issued date and may be exercised prior to the 00/00/2015 contract extension date. At the City's request, this option may become part of the City's Annual Support Services Agreement; appended to the existing purchase order and made a part thereof.

PAYMENT: due on release

APPROVED BY:

SIGNATURE

PRINT NAME & TITLE

DATE

All taxes related to goods and services, fees for permits, and similar charges applicable to goods and services provided shall be paid by the Purchaser in addition to any other charges. Any such payments made by Lochard shall be reimbursed as additional costs by the Purchaser. Lochard shall not be liable for any special, incidental, or consequential damages arising from fulfillment of an order from the Purchaser which results from this quotation.

Option B
Torrance Airport

The Torrance Airport has a requirement to monitor and manage the Airport Noise Monitoring System (ANOMS) technology provided by the Lochard Corporation and operated part time by the Environmental Quality Officer. The managing of the technology takes time away from other duties assigned and the interaction with the community and pilots.

It is proposed that the existing System management and first-level diagnostics required by the customer would be in turn provided by the vendor which would relieve the customer of maintaining the technology and to focus their efforts on their programs and their community.

Lochard to provide Noise Office Services to include:

- Data Validation
 - Ensuring system downloads
 - Verifying Post Process, and
 - Access to the data

- Technology Management
 - 1st level diagnostics by local subcontractor
 - SRG Radar data feed subscription (enhanced radar)

Total Monthly subscription to Data /Technology Noise Office Service Management:
\$750.00 per month

FREQUENCY: Daily.

TERMS, CONDITIONS & RESPONSIBILITIES: This option is valid for a period of 90 days from the issued date and may be exercised prior to the 00/00/2015 contract extension date. At the City's request, this option may become part of the City's Annual Support Services Agreement; appended to the existing purchase order and made a part thereof.

PAYMENT: due on release
APPROVED BY:

SIGNATURE

PRINT NAME & TITLE

DATE

All taxes related to goods and services, fees for permits, and similar charges applicable to goods and services provided shall be paid by the Purchaser in addition to any other charges. Any such payments made by Lochard shall be reimbursed as additional costs by the Purchaser. Lochard shall not be liable for any special, incidental, or consequential damages arising from fulfillment of an order from the Purchaser which results from this quotation.

Option C
Torrance Airport

The Torrance Airport has a requirement to monitor and manage the Airport Noise Monitoring System (ANOMS) technology provided by the Lochard Corporation and operated part time by the Environmental Quality Officer. The managing of the technology takes time away from other duties assigned and the interaction with the community and pilots.

It is proposed to enhance ANOMS software to include the WebTrak/WebTrak Investigate module to be provided by the Supplier to allow the community to view operations in a near real-time (15 minute delay) Web application hosted by the Supplier. This module allows the customer to self investigate and report which in turn will be imported into the existing ANOMS system. This would help the Environment employee by reducing the amount of time on calls and to concentrate their time on their community relations positions. Lochard is proposing the following.

Lochard to provide Noise Office Services to include:

- WebTrak
 - Web Based Application
 - Hosted at Lochard Data Center
 - Capability to view near real time operations

Total Monthly subscription to WebTrak hosted services: \$1200.00 per month

FREQUENCY: One time.

TERMS, CONDITIONS & RESPONSIBILITIES: This option is valid for a period of 90 days from the issued date and may be exercised prior to the 00/00/2015 contract extension date. At the City's request, this option may become part of the City's Annual Support Services Agreement; appended to the existing purchase order and made a part thereof.

PAYMENT: due on release

APPROVED BY:

SIGNATURE

PRINT NAME & TITLE

DATE

All taxes related to goods and services, fees for permits, and similar charges applicable to goods and services provided shall be paid by the Purchaser in addition to any other charges. Any such payments made by Lochard shall be reimbursed as additional costs by the Purchaser. Lochard shall not be liable for any special, incidental, or consequential damages arising from fulfillment of an order from the Purchaser which results from this quotation.