

CONTRACT BETWEEN THE CITY OF LOS ANGELES  
AND EMS BRÜEL & KJAER INC. DBA ENVIROSUITE INC. TO PROVIDE  
PROFESSIONAL NOISE AND OPERATIONS MONITORING SYSTEM SERVICES FOR  
THE DEPARTMENT OF AIRPORTS FOR THE  
CITY OF LOS ANGELES

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at Los Angeles, California by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter referred to as “City”), acting by order of and through the Board of Airport Commissioners (hereinafter referred to as “BOAC” or “Board”) of the Department of Airports (hereinafter referred to as “Department” or “LAWA”), and EMS BRÜEL & KJAER INC. dba ENVIROSUITE INC., a Delaware Corporation, (hereinafter referred to as “Contractor”).

RECITALS

That for and in consideration of the covenants and conditions hereinafter contained to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

WHEREAS, City desires comprehensive professional services, including expert, and technical services, to provide design, installation and maintenance, products and services regarding Los Angeles World Airports Noise and Operations Monitoring System (NOMS) Replacement; and,

WHEREAS, on September 17, 2020, LAWA issued a Request for Proposal seeking a Noise and Operations Monitoring System (NOMS) Replacement (hereinafter “the RFP”);

WHEREAS, based on the RFP competitive process, LAWA selected Contractor as the preferred proposer to provide these products and services; and,

WHEREAS, Contractor represents that it has the experience, ability, expertise, and resources to provide these services under the terms and conditions set forth herein; and,

WHEREAS, City has determined it is in its best interest to contract for such expert assistance.

NOW, THEREFORE, for and in consideration of the covenants and conditions hereinafter contained to be kept and performed by the respective parties hereto, IT IS MUTUALLY AGREED as follows:

Section 1.0 Term of Contract.

1.1 The term of this Contract shall commence on July 1, 2021 and shall terminate five (5) years therefrom, unless otherwise extended by exercise of option as set forth in Section 1.2 below, or otherwise terminated as set forth in this Contract.

1.2 Options to Extend Term. LAWA shall have two (2) options to extend the Contract, each for three (3) additional years. LAWA's exercise of an option to be provided to Contractor in writing.

Section 2.0 Definitions.

2.1 It is understood that when the following words and phrases are used herein, each shall have the meaning set forth opposite the same:

BOARD: The Board of Airport Commissioners of the City of Los Angeles.

DEPARTMENT  
OR LAWA: The Department of Airports of the City of Los Angeles.

CHIEF  
EXECUTIVE  
OFFICER: Chief Executive Officer, Interim Chief Executive Officer of the Department of Airports, or her/his authorized designee.

Section 3.0 Contractor Scope and Fee.

3.1 Contractor shall provide comprehensive products and services regarding Los Angeles World Airports Noise and Operations Monitoring System (NOMS) as further described herein, and in Exhibit A attached hereto and incorporated herein by reference.

3.2 The compensation to Contractor shall not exceed Seven Million Seven Hundred Twenty Five Thousand Seven Hundred Thirty-Two Dollars (\$7,725,732). The stated amount is deemed to include all provisions for Contractor's compensation for services, including, without limitation, travel costs, fringe benefits, all out of pocket expenses, and overhead costs.

3.3 Contractor or subcontractor shall pay to any subcontractor(s), not later than seven (7) days after receipt of each payment, the respective amounts allowed the Contractor on account of the work performed by the subcontractor(s), to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a payment from the Contractor or subcontractor, the Contractor or subcontractor(s) to a subcontractor, the Contractor or subcontractor may withhold no more than One Hundred Fifty Percent (150%) of the disputed amount. Contractor shall include this provision in all of its subcontracts.

3.4 All requests for payment submitted pursuant to this Contract shall be certified by a duly authorized officer of Contractor. City reserves the right to require additional substantiation of any payment request submitted if, in the opinion of the Chief Executive Officer, such would be in the best interest of City. In order to verify charges incurred and invoiced by Contractor in the performance of this Contract, Contractor agrees to make pertinent books and records available to City's representative at LAWA's Office at the address listed below upon fifteen (15) days' notice. Contractor agrees to pay for all travel costs, housing, and other related expenses associated with the audit of said books, reports, accounts, and records by LAWA at Contractor's place of records if said place of records is outside of the greater Los Angeles metropolitan area.

3.5 City shall not be required to make payments for Services not yet provided or received, nor for Services deemed unsatisfactory by City. The parties agree that the Chief Executive Officer shall make the final determination as to when Contractor's Services or any part thereof have been satisfactorily performed or completed or the Services provided to City to justify release of any given payment to Contractor under this Contract.

3.6 If a necessary change causes an increase in the scope of work or services to be performed or the Services to be provided by Contractor pursuant to this Contract, then the parties hereto shall first agree upon additional compensation, if any, to be paid to Contractor therefore, and this Contract shall be amended, in writing, prior to the performance by Contractor of said increased work or service.

3.7 The costs for Services under this Contract shall be as low as those currently charged the Contractor's most favored customers for comparable quantities under similar terms and conditions. If, at the time Services are provided to the City additional discounts are available to Contractor's other government and commercial customers based on volume guarantees, then, on condition that the City requests Contractor's then current list of lowest available costs from Contractor, the City will be offered the opportunity to have the Services provided at such lower costs as those charged to Contractor's most favored customer based on similar terms and conditions.

#### Section 4.0 Staffing and Personnel.

The names and titles of those persons that will perform work pursuant to this Contract (the "Contract Team") are attached as Exhibit B. Changes to the Contract Team shall only be made after written request by Contractor to the Chief Executive Officer and shall be subject to the Chief Executive Officer's prior written approval.

#### Section 5.0 Termination or Suspension of Services or Contract.

5.1 City, or the Chief Executive Officer if within his/her authority, may terminate this Contract, with or without cause, upon giving the Contractor a thirty (30) day advance written notice.

5.2 The Chief Executive Officer may, if within his/her authority: (1) require Contractor to terminate or suspend the performance of all, or a portion, of its services for any reason and/or (2) terminate any part of this Contract for any reason, upon giving Contractor thirty (30) days written notice prior to the effective date of such suspension or termination which date shall be specified in such notice.

5.3 In the event that this Contract or any portion thereof and/or Contractor's services, or any portion thereof is suspended or terminated by Chief Executive Officer as provided in Section 5.2, the City will compensate Contractor for services completed and satisfactorily performed, as determined by LAWA staff, subject to the terms under Section 3.0.

Section 6.0 Default and Right of Termination.

6.1 In the event a Contractor fails to abide by the terms, covenants and conditions of this Contract, City may, instead of immediately exercising its rights under Section 5, give Contractor written notice to correct the defect or default. If the same is not corrected, or substantial steps are not taken toward accomplishing such correction, within five (5) days after City's mailing of notification, City may, at its sole discretion, (a) terminate this Contract forthwith upon giving Contractor a ten (10) day written notice, or (b) withhold any further payment for Contractor's services until such defect or default is corrected within the time specified by the City. If the default or defect is still not corrected within that time, City may terminate this Contract forthwith upon giving Contractor a ten (10) day written notice.

6.2 Notwithstanding anything herein to the contrary, the City has the right to terminate this Contract, with or without cause, upon thirty (30) days advance written notice to the Contractor.

Section 7.0 Notices.

7.1 Notice to City. Written notices to City hereunder, with a copy to the City Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

Department of Airports  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90009-2216

Office of City Attorney  
1 World Way  
Post Office Box 92216  
Los Angeles, CA 90009-2216

or to such other address as City may designate by written notice to Contractor.

7.2 Notice to Contractor. Written notices to Contractor hereunder, with a copy to the City Attorney of the City of Los Angeles, shall be given by registered or certified mail, postage prepaid, and addressed to:

Gregory Bracci  
Vice President – North America  
2330 East Bidwell Street Suite 210  
Folsom, CA 95630

or to such other address as Contractor may designate by written notice to City.

7.3 The execution of any such notice by the Chief Executive Officer shall be as effective as to Contractor as if it were executed by the Board, or by Resolution or Order of said Board, and Contractor shall not question the authority of the Chief Executive Officer or the designee to execute any such notice.

7.4 All such notices, except as otherwise provided herein, may either be delivered personally to Chief Executive Officer with a copy to the Office of the City Attorney, Airport Division, in the one case, or to Contractor in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail; or may be deposited with an overnight carrier such as Federal Express or Express Mail next day delivery, properly addressed as aforesaid, with overnight carrier fees/postage fully prepaid, and shall be effective 2 business days after provided to the carrier for overnight delivery.

#### Section 8.0 City Held Harmless.

8.1 In addition to the requirements of Section 25, Insurance herein, to the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City and any and all of City's Boards, officers, agents, employees, assigns and successors in interest from and against any and all suits, claims, causes of action, liability, losses, damages, demands or expenses (including, but not limited to, attorney's fees and costs of litigation), claimed by anyone (including Contractor and/or Contractor's agents or employees) by reason of injury to, or death of, any person(s) (including Contractor and/or Contractor's agents or employees), or for damage to, or destruction of, any property (including property of Contractor and/or Contractor's agents or employees) or for any and all other losses, founded upon or alleged to arise out of, pertain to, or relate to the Contractor's and/or Sub-Contractor's performance of the Contract, whether or not contributed to by any act or omission of City, or of any of City's Boards, officers, agents or employees. Provided, however, that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from or relate to Contractor's performance of a "Construction Contract" as defined by California Civil Code section 2783, this paragraph shall not be construed to require Contractor to indemnify or hold City harmless to the extent such suits, causes of action, claims, losses, demands and expenses are caused by the City's sole negligence, willful misconduct or active negligence. Provided further that where such suits, claims, causes of action, liability, losses, damages, demands or expenses arise from Contractor's design professional services as defined by California Civil Code section 2782.8, Contractor's indemnity obligations shall be limited to

allegations, suits, claims, causes of action, liability, losses, damages, demands or expenses arising out of, pertaining to, or relating to the Contractor's negligence, recklessness or willful misconduct in the performance of the Contract.

In addition, Contractor agrees to protect, defend, indemnify, keep and hold harmless City, including its Boards, Departments and City's officers, agents, servants and employees, from and against any and all claims, damages, liabilities, losses and expenses arising out of any threatened, alleged or actual claim that the end product provided to LAWA by Contractor violates any patent, copyright, trade secret, proprietary right, intellectual property right, moral right, privacy, or similar right, or any other rights of any third party anywhere in the world. Contractor agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement.

In Contractor's defense of the City under this Section, negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

Survival of Indemnities. The provisions of this City Held Harmless Section shall survive the termination of this Contract.

8.2 In addition, Contractor agrees to protect, defend, indemnify, keep and hold harmless City Defendants, from and against any and all Claims arising out of any threatened, alleged or actual claim that any end product used in accordance with this Contract provided to the City by Contractor or the Contractor's response to the Request for Proposals ("RFP"), infringes any party's invention (patentable or not), patent, trademark, service marks, trade dress, copyright, trade secret, proprietary right, moral right, privacy, *sui generis* right, or other intellectual property rights, including , ideas, concepts, themes, processes, methods, algorithms, other proprietary information or intangible rights (hereinafter referred to collectively as "Intellectual Property Rights"). Contractor further agrees to, and shall, pay all damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City arising out of, or relating to, the matters set forth above in this paragraph of the City's "Hold Harmless" agreement.

8.3 Should Contractor reasonably believe that (1) any of the Work Products (as defined in Section 17) allegedly or actually infringes or is likely to infringe on any third party Intellectual Property Rights, or (2) any of the licenses procured on behalf of the City under this Contract is to expire, to be terminated or enjoined sooner than the term procured for, Contractor shall immediately notify City of such alleged, actual or potential infringement or license status. Upon City's request, Contractor shall, at Contractor's own expense:

- i) procure for the City the right or license to continue using the intellectual property at issue; or
- ii) replace the intellectual property at issue with a functionally equivalent, non-infringing product, if practicable.

Exercise of any of the above-mentioned options shall not cause undue business interruption to the City or its agents/consultants, or diminish the intended benefits and use of the Work Products by the City or its agents/consultants under the specifications herein.

8.4 In addition, Contractor agrees to defend, indemnify and hold harmless City Defendants from and against any and all Claims, made by anyone arising out of any allegations in connection with Contractor's use of any of its employees and/or subcontractors and/or consultants working under this Contract or in connection with Contractor's response to the RFP, including but not limited to allegations for tortious interference with contractual relations, aiding and abetting, unjust enrichment, violations of any party's Intellectual Property Rights. Contractor agrees to, and shall, pay all such damages, settlements, expenses and costs, including costs of investigation, court costs and attorney's fees, and all other costs and damages sustained or incurred by City.

8.5 In Contractor's defense of the City under Section 8, including but not limited to the negotiation, compromise, and settlement of any action, the City shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals there from, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

8.6 Survival of Indemnities. The provisions under Section 8 shall survive the termination of this Contract. Rights and remedies available to the City hereinabove shall survive the termination of this Contract. Further, the rights and remedies are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.

#### Section 9.0 Advertisements.

9.1. Contractor shall not, at any time, under any circumstances, install, place, or maintain any type of advertising, on Airports.

#### Section 10.0 Alternative Fuel Vehicle Requirement Program (for LAX Only).

10.1. Contractor shall comply with the provisions of the alternative fuel vehicle requirement program (the "Alternative Fuel Vehicle Requirement Program"). The rules, regulations and requirements of the Alternative Fuel Vehicle Requirement Program are attached as Exhibit C and made a material term of this Contract.

Section 11.0 Assignment or Transfer Prohibited.

11.1 Contractor shall not, in any manner, directly or indirectly, by operation of law or otherwise, hypothecate, assign, transfer or encumber this Contract, or any portion thereof or any interest therein, without the prior written consent of the City or the Chief Executive Officer if within his/her authority. This Contract shall not, nor shall any interest therein, be assignable as to the interest of Contractor by operation of law without the prior written consent of the City or the Chief Executive Officer if within his/her authority.

11.2 For purposes of this Contract, the terms “transfer” and “assign” shall include, but not be limited to, the following: (i) if Contractor is a joint venture, a limited liability company, or a partnership, the transfer of fifty percent (50%) or more of the interest or membership in the joint venture, the limited liability company, or the partnership; (ii) if Contractor is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Contractor; (iii) the dissolution by any means of Contractor; and, (iv) a change in business or corporate structure. Any such transfer, assignment, mortgaging, pledging, or encumbering of Contractor without the written consent of the City is a violation of this Contract and shall be voidable at the City’s option and shall confer no right, title, or interest in or to this Contract upon the assignee, mortgagee, pledgee, encumbrancer, or other lien holder, successor, or purchaser.

11.3 In the event of a name change of Contractor, in which there is no transfer, assignment, mortgaging, pledging, or encumbering of Contractor as provided in Section 11.2, the Contractor must obtain the written consent of the Chief Executive Officer; and Contractor shall provide all related documents, as well as any other documents requested by LAWA. Failure to obtain the consent of the Chief Executive Officer under this section may result in the City’s inability to pay and delay in paying the newly named entity.

11.4 When proper consent has been given by the City, or the Chief Executive Officer if within his/her authority, the provisions of this Contract shall be binding upon, and shall inure to the benefit of, the heir(s), successor(s), executor(s), administrator(s) and assign(s) of the parties hereto.

Section 12.0 Attorneys Fees.

12.1. If City shall, without any fault, be made a party to any litigation commenced by or against Contractor arising out of Contractor's use or occupancy of Airport, then Contractor shall pay all costs, expenses, and reasonable attorney's fees incurred by or imposed upon City in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.



Section 13.0 Disabled Access.

13.1 As directly related to Contractor's responsibilities with regard to this Contract, Contractor shall be solely responsible for fully complying with any and all applicable present and/future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access including any services, programs, improvements or activities provided by Contractor. Contractor shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Contractor's noncompliance. Further, Contractor agrees to cooperate fully with City in its efforts to comply with the Americans with Disability Act of 1990 and any amendments thereto, or successor statutes.

13.2 Should Contractor fail to comply with Section 13.1, if applicable, then City shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Contractor will then be required to reimburse City for the actual cost of achieving compliance, plus a fifteen percent (15%) administrative charge.

Section 14.0 Environmentally Favorable Operations.

14.1. Contractor acknowledges for itself and any subcontractors that its operation of its activities under this Contract will be subject to all the Department's policies, guidelines and requirements regarding environmentally favorable construction, use and/or operations practices (collectively "LAWA Policies") as such LAWA Policies may be promulgated, revised and amended from time-to-time."

Section 15.0 First Source Hiring Program For Airport Employers (for LAX ONLY).

15.1. Contractor shall comply with the provisions of the First Source Hiring Program adopted by the Board. The rules, regulations, requirements, and penalties of the First Source Hiring Program are attached as Exhibit D and made a material term of this Contract.

Section 16.0 Independent Contractor.

16.1 It is the express intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of City. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Contractor and City or between Contractor and any official, agent, or employee of City. Both parties acknowledge that Contractor is not an employee of City.

16.2 Contractor shall retain the right to perform services for others during the term of this Contract, unless specified to the contrary herein or prohibited by conflict of interest or ethics laws, regulations, or professional rules of conduct.

Section 17.0 Ownership of Work Products, Licenses, and Data Delivery.

17.1 The City shall own all titles, rights and interests in all Work Products created, originated and/or prepared by Contractor and all of its subcontractors, for the City under this Contract. Work Products are all materials, tangible or not, created in whatever medium under this Contract, including without limitation documents, material, data, artwork, photographs, video and audiovisual recordings, sound recordings, websites, domain names, inventions, processes, reports, manuals, specifications, drawings and sketches, computer programs and databases, schematics, maps, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of Intellectual Property Rights. Contractor shall not dispute or contest, directly or indirectly, the City's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the City, shall assign to the City all titles, rights and interests in all Work Products. Contractor hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by Contractor under this Contract. Contractor further agrees to, and shall cause applicable subcontractors to, execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights, titles or interests provided herein, including prompt execution of documents as presented by the City. Contractor agrees that before commencement of any subcontract work it will incorporate all provisions in this Contract on property ownership, including Section 17, to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Contract such that the City's titles, rights, and interests in Work Products are preserved and protected as intended herein. In the event that LAWA orders additional development services in the future, the terms and conditions of this Contract shall apply to those future orders; except for commissioned research and development projects to primarily create new software, hardware and/or firmware (including Apps) for LAWA, which shall be pursuant to a separate agreement.

17.2 City shall own exclusively all tangible property and intellectual property rights in data (1) obtained or collected from City, by Contractor in its performance of Services under this Contract; (2) acquired or generated by Contractor related to LAWA Airport services in its performance of Services under this Contract; or, (3) data processed through and/or under Services related to LAWA Airport services by Contractor or subcontractors under performance of this Contract, and with regards to (2) and (3) above, in all data derived or created from such original data (collectively "DATA"); except in any case, DATA does not include (a) third-party data contained in data sent to the City and, (b) Contractor's Data. Contractor's Data shall mean data generated relating to performance of Contractor's systems and Services, and excludes any DATA. DATA shall include data of all kinds and formats, standard or native, raw or processed or derived, individual or aggregate, discrete or continuous, personally identifiable ("PII") or anonymized, as well as metadata. For the purpose of this Contract, PII is defined as information that can be used to identify, contact, or locate a natural person, including without limitation, natural person's name, Internet Protocol (IP) address, email address, postal address, telephone number, account numbers, date of birth, driver's license or other government-issued identification card numbers and social

security numbers, or any other information that is linked or linkable to an individual.

17.3 All subcontracts entered into by Contractor relating to this Contract, to the extent allowed hereunder, shall include intellectual property ownership provisions in this Section to contractually bind or otherwise oblige subcontractor performing work under this Contract such that the City's ownership in all Work Products and DATA, as well as its DATA access rights are preserved and protected as intended herein. Failure of Contractor to comply with this requirement or to obtain the compliance of its subcontractor with such obligations shall subject Contractor to the imposition of any and all sanctions and remedies allowed by law, including but not limited to termination of this Contract and of Contractor's business relationships with the City.

- (a) In all subcontracts with subcontractors, Contractor shall insert the following express provision "City of Los Angeles is the sole and intended third-party beneficiary to this Contract, and the rights of the City of Los Angeles survive termination, expiration and cancellation of this Contract." Waiver of this requirement may only be granted with prior written consent
- (b) All rights not expressly granted by City are reserved. Nothing in this Contract shall be construed to waive any remedies available to City at law and in equity, including injunctive relief rights.

17.4 Data Collection, Use, Storage.

- (a) In performing this Contract, Contractor and subcontractor could be in a position to obtain through City personally identifiable data or information of natural persons, also known as Personally Identifiable Information (hereinafter referred to as "PII"). PII is defined per Section 17.2.
- (b) Under no circumstances shall Contractor and/or any of its subcontractors process more PII than required to perform its obligations under this Contract in accordance with applicable law. All collection, receipt, processing, storage, sharing, use and exploitation of PII by Contractor and its subcontractors shall comply with all applicable privacy laws, domestic and foreign, including without limitation the California Consumer Privacy Act of 2018, and any amendments thereto, and EU General Data Protection Regulation.
- (c) To the extent that any PII data is stored, held or otherwise contained on Contractor's or its subcontractors' systems, Contractor and subcontractors shall not allow possession by City of any PII until express written request of access by the Chief Executive Officer of LAWA is received.

- (d) Except pursuant to separate agreements with customers or users of its facilities or services relating to retention or reuse of PII, Contractor will not, and will cause others working on its behalf not to, retain any PII for any period longer than necessary for Contractor to fulfill its obligations under this Contract. Where City is owner of any PII, any destruction of such City-owned PII requires prior written City approval, subject to City document retention policy, if applicable.
- e) Contractor agrees that any violation of provisions pertaining to rights to data in this Contract constitutes material breach and irreparable harm to City.

17.5 To minimize service interruption and preserve DATA integrity, Contractor shall have in place, and shall cause its subcontractors to have the same, protocols and procedures on periodic data backups and disaster recovery per then-current prevailing industry standards and practices in providing the Services.

17.6 Contractor represents and warrants that performance of all obligations (including those performed by its subcontractors) under this Contract does not infringe in any way, directly or contributorily, upon any third party's Intellectual Property Rights, including, without limitation, proprietary information, trade secrets and confidential information.

17.7 Contractor shall procure or causes to procure for City (including its employees, consultants and agents) all Intellectual Property Rights licenses (and/or sublicenses) necessary to enjoy fully the Work Products, deliverables and benefits conferred and/or delivered to City under this Contract. Such licenses shall be non-transferable royalty-paid, perpetual, irrevocable in favor of the City, its employees, consultants and agents.

17.8 Contractor's Trade Secrets. Trade Secrets, as used in this Contract, are defined in California Government Code Section 6254.7 and California Evidence Code Section 1061(a)(1) and may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. Parties acknowledge that no Work Products or deliverables created for and delivered to City under this Contract may constitute or contain any trade secrets of Contractor's or that of any other third party, except as contained in the RFP.

17.8.1 In the event that Contractor reveals any of its Trade Secrets (that is so marked conspicuously on every page) to City to further the intent and purpose of this

Contract, so notifies City in writing that it has revealed its Trade Secrets to City, and so provide City with a "public copy" in which all such Trade Secrets are redacted or hidden; then City agrees to notify Contractor of any request made pursuant to the California Public Records Act, Cal. Gov. Code, § 6250 et seq., ("CPRA") that includes Contractor's redacted Trade Secrets. If requested, City has the option to disclose any of Contractor's Trade Secrets (in addition to the public copy), unless Contractor objects in writing to the City after ten (10) calendar days from the written notice date by the City to Contractor of the CPRA request, agrees to indemnify and hold City harmless for non-production of such Trade Secrets, and seeks timely judicial ruling on whether City shall produce such Trade Secrets under the CPRA request.

17.8.2 Unless expressly stated otherwise, for all pre-existing third-party and Contractor's intellectual property (if any), including software, required to operate or use any Work Product delivered by Contractor, Contractor hereby grants and will cause others to grant City (including its agents and contractors) a royalty-paid, perpetual, irrevocable license to use such pre-existing intellectual property internally by the City (including its agents and contractors).

17.9 The provisions of Paragraphs 17.1 through 17.8 shall survive termination of this Contract.

#### Section 18.0 Restrictions and Regulations.

18.1 Contractor shall be solely responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any Federal, State, and/or local government authority applicable to its actions taken in performance of the Services.

18.2 Contractor shall be solely responsible for fully complying with any and all applicable present and/or future orders, directives, or conditions issued, given or imposed by the Chief Executive Officer which are now in force or which may be hereafter adopted by the Board of Airport Commissioners and/or the Chief Executive Officer with respect to the operation of Airport.

18.3 Contractor shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws, orders, directives and or conditions.

18.4 Contractor shall be solely responsible for insuring that the Services fully comply with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state, and/or local government authority.

Section 19.0 Physical Security, Cybersecurity, and Data Protection.

- 19.1 (a) Contractor, including its subcontractor, is solely responsible for all physical security and cybersecurity of the computer systems which are hosted within Contractor's or sub-contractors' data centers or cloud environments. The Contractor, including its sub-contractors, will be responsible for maintaining the protection of DATA within its control and in accordance with the agreed upon standards during its performance of this Contract.
- (b) Contractor shall employ, and shall cause its subcontractor to employ, physical security practices and protocols per then-current prevailing industry standards for protection of physical facilities that house its systems related to the Services provided to City under this Contract.
- (c) Contractor shall have, and shall cause its subcontractors to have, data protection protocols consistent with then-current prevailing standards in the industry, (1) that protect data against unauthorized or unlawful access, transfer, processing, copying or alteration, (2) that protect against accidental access, loss, damage, processing, use, transfer or destruction and (3) that promptly detect, report and remedy any breach of data ("Data Incident and Response Protocols"). In addition, Contractor undertakes, and shall cause its subcontractors to undertake, review at least annually the Data Incident and Response Protocols to ensure they are fit for the purposes. For cloud services provided by a subcontractor, Contractor shall provide a copy of such subcontractor's annual independent audit security-related reports as related to the scope of Services. No less frequently than annually, Contractor shall cause an independent auditor to perform an audit on Services, which (1) assesses security controls in the cloud information system, (2) determines the extent to which security controls are implemented correctly, operating as intended, and producing the desired outcome with respect to the security requirements for the system, (3) evaluates Contractor's Data Incident and Response Protocols for suspected or actual breach incidents, and/or (4) includes the verification of compliance with regulation and security policy. Such audits shall be conducted using applicable auditing standards as well as prevailing industry standards on information security management, including without limitation those of the National Institute of Standards and Technology, International Organization for Standardization and International Electrotechnical Commission. LAWA shall be provided a copy of the independent audit reports. Additionally, LAWA reserves the right to, no more frequently than annually: (1) request Contractor to provide responses to a security questionnaire pertaining to Contractor's Services provided

hereunder; and (2) request to perform its own audit at its own expense, provided there is a reasonable basis for such, and the audit is limited to a mutually agreed upon scope related to Contractor's Services, at a mutually agreed upon time that will not be disruptive to Contractor's business and pursuant to a separate confidentiality agreement in light of City's legal obligations.

- (d) Contractor shall notify, and will cause its subcontractors to notify, City within two (2) hours of discovering suspected or actual security breach of (1) its systems used in the provision of Services, (2) the physical facilities containing the such systems, or (3) any DATA, including without limitation, PII, and Confidential Information, stored on Contractor's systems used in the provision of Services. In addition, written confirmation of any such security breach must be sent within two (2) days of discovery or notification of the actual breach or suspected breach. City has the right to request a questionnaire regarding and/or access Contractor's Data Incident and Response Protocols for suspected and actual breach incidents. Upon such request by City, Contractor shall promptly provide such information.
- (e) Upon City's determination that any unauthorized use or security breach of PII has occurred or reasonably likely to have occurred, Contractor shall, and cause its subcontractors to, fully cooperate with City in rectifying any unauthorized use or breach, including notifying all affected City customers and members of the general public. Unless Contractor has the primary obligation of breach notification under applicable law, City shall determine, in its sole discretion, the content, and means of delivery of the customer notice. To the extent that the breach was caused by Contractor or its subcontractors and not by the City, Contractor will bear all reasonable costs and expenses for mitigation actions incurred as a result of security breach primarily caused directly or indirectly by Contractor or its subcontractors, including but not limited to, the administrative cost of opening and closing accounts, notices, print and mailing, and obtaining credit monitoring services and identity theft insurance for City's customers whose PII has or may have been compromised. Contractor's responsibilities under this subsection are cumulative to its legal obligations under applicable foreign, federal, state and local laws and regulations pertaining to breach notification and remedies.
- (f) Contractor acknowledges that City could be subject to certain obligations, if applicable to the cloud services, to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft (defined as fraud committed using the identifying information of another person), pursuant to Section 114 of the Fair and Accurate Credit

Transactions Act of 2003 and its implementing regulations promulgated by the Office of the Comptroller of the Currency, 12 C.F.R. Part 41. Contractor, to the extent that it holds or otherwise has access to DATA stored as part of the Services that is subject to the Fair and Accurate Credit Transactions Act, agrees to, and causes its subcontractors to, establish, maintain and update reasonably effective policies and procedures to detect, prevent, and mitigate the risk of identity theft, and to notify and report to City immediately upon request, any instances where Contractor or its Subcontractor detect potential identity theft. Contractor further agrees to immediately report to City any confirmed instances of identity theft. In furtherance thereof, if applicable, Contractor agrees to be guided by the examples of identity theft “Red Flags” (defined as a pattern, practice, or specific activity that indicates the possible existence of identity theft) set forth in Supplement A to Appendix J to 12 C.F.R. Part 41. Upon request by City, Contractor agrees to confirm in writing and, when specified, demonstrate to City its compliance with the requirements of this Section.

- (g) To minimize service interruption and preserve DATA integrity, Contractor shall have in place, and shall cause its subcontractors to have the same, protocols and procedures on periodic data and system backups and disaster recovery per then-current prevailing industry standards and practices in providing cloud services and maintaining the systems used in the providing of Services to City.

#### Section 20.0 Waiver.

20.1 The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition.

#### Section 21.0 Business Tax Registration.

21.1. Contractor represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Contractor shall maintain, or obtain as necessary, all such certificates required of it under said ordinance and shall not allow any such certificates to be revoked or suspended during the term hereof.

#### Section 22.0 Child Support Orders.

22.1. This Contract is subject to Los Angeles Administrative Code, Division 10, Chapter 1, Article 1, Section 10.10, et seq. related to Child Support Assignment Orders, which is



incorporated herein by this reference. A copy of Section 10.10 has been attached hereto for the convenience of the parties as Exhibit E. Pursuant to this section, Contractor (and any subcontractor of Contractor providing services to City under this Contract) shall (1) fully comply with all State and Federal employment reporting requirements for Contractor's or Contractor's subcontractor's employees applicable to Child Support Assignment Orders; (2) certify that the principal owner(s) of Contractor and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Contract. Pursuant to Section 10.10 (b) of the Code, failure of Contractor or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Contractor or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Contract subjecting this Contract to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Contractor by City (in lieu of any time for cure provided elsewhere in this Contract).

#### Section 23.0 Contractor Responsibility Program.

23.1 Pursuant to Resolution No. 21601 adopted by the Board of Airport Commissioners, effective May 20, 2002, it is the policy of Los Angeles World Airports (LAWA) to ensure that all LAWA contractors have the necessary quality, fitness and capacity to perform the work set forth in the contract. LAWA shall award contracts only to entities and individuals it has determined to be Responsible Contractors. The provisions of this Program apply to leases and contracts for construction, for services, and for purchases of goods and products that require Board approval.

23.2 Bidders/Proposers are required to complete and submit with the bid/proposal the attached "Contractor Responsibility Program Questionnaire" that provides information LAWA needs in order to determine if the bidder/proposer is responsible and has the capability to perform the contract. The information contained in the CRP Questionnaire is subject to public review for a period of not less than 14 days. Bidders/Proposers are also required to complete, sign and submit with the bid/proposal the attached "Contractor Responsibility Program Pledge of Compliance." Bidders/Proposers are also required to respond within the specified time to LAWA's request for information and documentation needed to support a Contractor Responsibility determination. Subcontractors will be required to submit the Pledge to the prime contractor prior to commencing work. The CRP Rules and Regulations are available at <http://www.lawa.org>.

#### Section 24.0 Nondiscrimination and Affirmative Action Program.

##### 24.1 Federal Non-Discrimination Provisions.

24.1.1 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. This provision obligates Contractor or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. [USE GUIDE, paragraph 1].<sup>1</sup>

## 24.2 Municipal Non-Discrimination Provisions.

24.2.1 Non-Discrimination In Use Of Airport. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of Airport or any operations or activities conducted on Airport. Nor shall Contractor or any person claiming under or through Contractor establish or contract any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of contractors, subcontractors, or vendees of Airport. Any assignment or transfer, which may be permitted under this Contract, shall also be subject to all non-discrimination clauses contained in Section 23.2.

24.2.2 Non-Discrimination In Employment. During the term of this Contract, Contractor agrees and obligates itself in the performance of this Contract not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. Contractor shall take affirmative action to insure that applicants for employment are treated, during the term of this Contract, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

24.2.3 Equal Employment Practices. If the total payments made under this Contract are One Thousand Dollars (\$1,000) or more, this provision shall apply. During the performance of this Contract, Contractor agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"), which is incorporated herein by this reference. A copy of Section 10.8.3 has been attached to this Contract for

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<sup>1</sup> The paragraph references are to mandatory requirements contained in a document entitled, "LEASE AND USE AGREEMENT GUIDE," dated June 6, 1984, revised May 2001, published by the Federal Aviation Administration.

the convenience of the parties as Exhibit F. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Contractor to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Contractor. Upon a finding duly made that Contractor has failed to comply with the Equal Employment Practices provisions of this Contract, this Contract may be forthwith terminated, cancelled, or suspended.

24.2.4 Affirmative Action Program. If the total payments made under this Contract are One Hundred Thousand Dollars (\$100,000) or more, this provision shall apply. During the performance of this Contract, Contractor agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("Affirmative Action Program"), which is incorporated herein by this reference. A copy of Section 10.8.4 has been attached to this Contract for the convenience of the parties as Exhibit G. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Code, the failure of Contractor to comply with the Affirmative Action Program provisions of this Contract may be deemed to be a material breach of this Contract. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to Contractor. Upon a finding duly made that Contractor has failed to comply with the Affirmative Action Program provisions of this Contract, this Contract may be forthwith terminated, cancelled, or suspended.

#### Section 25.0 Equal Benefits Ordinance.

25.1 Unless otherwise exempt in accordance with the provisions of the Equal Benefits Ordinance (hereinafter referred to as "EBO"), Contractor certifies and represents that Contractor will comply with the applicable provisions of EBO Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time. Contractor shall not, in any of its operations within the City of Los Angeles or in other locations owned by City, including Airport, discriminate in the provision of Non-ERISA Benefits (as defined below) between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration. As used above, the term "Non-ERISA Benefits" shall mean any and all benefits payable through benefit arrangements generally available to Contractor's employees which are neither "employee welfare benefit plans" nor "employee pension benefit plans", as those terms are defined in Sections 3(1) and 3(2) of ERISA. Non-ERISA Benefits shall include, but not limited to, all benefits offered currently or in the future, by Contractor to its employees, the spouses of its employees or the domestic partners of its employees, that are not defined as "employee welfare benefit plans" or "employee pension benefit plans", and, which include any bereavement leave, family and medical leave, and travel discounts provided by Contractor to its employees, their spouses and the domestic partners of employees.

25.2 Contractor agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the term of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-6480.”

25.3 The failure of Contractor to comply with the EBO will be deemed to be a material breach of the Contract by City. If Contractor fails to comply with the EBO City may cancel or terminate the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by City. City may also pursue any and all other remedies at law or in equity for any breach. Failure to comply with the EBO may be used as evidence against Contractor in actions taken pursuant to the provisions of Code Section 10.40, *et seq.*, Contractor Responsibility Ordinance. If City determines that Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, City may terminate the Contract.

#### Section 26.0 Insurance.

26.1 Contractor shall procure at its expense, and keep in effect at all times during the term of this Contract, the types and amounts of insurance specified on Insurance, Exhibit H, attached hereto and incorporated by reference. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, its Department, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described on Insurance, Exhibit H, hereof with respect to Contractor's acts or omissions in its operations, use, and occupancy of the Airport or other related functions performed by or on behalf of Contractor in, on or about Airport.

26.2 Each specified insurance policy (other than workers' compensation and employers' liability and fire and extended coverages) shall contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a contractual endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Contract with the City of Los Angeles."

26.3 All such insurance shall be primary and noncontributing with any other insurance held by City's Department where liability arises out of or results from the acts or omissions of Contractor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Contractor. Such policies may provide for reasonable deductibles and/or retentions acceptable to the Chief Executive Officer based upon the nature of Contractor's operations and the type of insurance involved.

26.4 City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, its Department, Board and all of City's officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Contractor in Contractor's operations at Airport. In the event Contractor fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Contractor, and Contractor agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

26.5 At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Contractor shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

26.6 Contractor shall provide proof of all specified insurance and related requirements to City either by production of a stamped true and certified copy(ies) of the actual insurance policy(ies), by use of LAWA's own endorsement form(s), by broker's letter acceptable to the Chief Executive Officer in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the Chief Executive Officer. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of the Los Angeles Administrative Code (the "Code") prior to Contractor occupying the Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

26.7 City and Contractor agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Contract by the Chief Executive Officer who may, thereafter, require Contractor, on thirty (30) days prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Chief Executive Officer deems to be adequate.

26.8 Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Contractor agrees, except where exempted, to provide City proof of said insurance by and through a surplus line broker licensed by the State of California.

Section 27.0 Living Wage Requirements.

27.1 Living Wage Ordinance.

27.1.1 General Provisions: Living Wage Policy. This Contract is subject to the Living Wage Ordinance (hereinafter referred to as "LWO") (Section 10.37, et seq., of the Los Angeles Administrative Code, which is incorporated herein by this reference. A copy of Section 10.37 has been attached hereto for the convenience of the parties as Exhibit I. The LWO requires that, unless specific exemptions apply, any employees of a service contractor who render services that involve an expenditure in excess of Twenty-Five Thousand Dollars (\$25,000) and a contract term of at least three (3) months are covered by the LWO if any of the following applies: (1) at least some of the services are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than Twelve Dollars (\$12) per hour of their possible right to the Federal Earned Income Tax Credit (hereinafter referred to as "EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Contractor shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by City. Whether or not subject to the LWO, Contractor shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Contractor agrees to comply with Federal law prohibiting retaliation for union organizing.

27.1.2 Living Wage Coverage Determination. An initial determination has been made that this is a service contract under the LWO, and that it is not exempt from coverage by the LWO. Determinations as to whether this Contract is a service contract covered by the LWO, or whether an employer or employee is exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Contractor in writing about any redetermination by City of coverage or exemption status. To the extent Contractor claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Contractor to prove such non-coverage or exemption.

27.1.3 Compliance; Termination Provisions And Other Remedies: Living Wage Policy. If Contractor is not initially exempt from the LWO, Contractor shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the execution date of this Contract. If Contractor is initially exempt from the LWO, but later no longer qualifies for any exemption, Contractor shall, at such time as Contractor is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Code, violation of the LWO shall constitute a material breach of this Contract and City shall be entitled to terminate this Contract and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Contractor violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Contract. Nothing in this Contract shall be construed to extend the time periods or limit the remedies provided in the LWO.

27.1.4 Subcontractor Compliance. Contractor agrees to include, in every subcontract or sublease covering City property entered into between Contractor and any subcontractor, a provision pursuant to which such subcontractor (A) agrees to comply with the LWO with respect to City's property; (B) agrees not to retaliate against any employee lawfully asserting noncompliance on the part of the subcontractor with the provisions of either the LWO; and (C) agrees and acknowledges that City, as the intended third-party beneficiary of this provision may (i) enforce the LWO directly against the subcontractor with respect to City property, and (ii) invoke, directly against the subcontractor with respect to City property, all the rights and remedies available to City under Section 10.37.5 of the LWO, as same may be amended from time to time.

27.2 Service Contract Worker Retention Ordinance. This Contract may be subject to the Service Contract Worker Retention Ordinance (hereinafter referred to as "SCWRO") (Section 10.36, et seq, of the Los Angeles Administrative Code), which is incorporated herein by this reference. If applicable, Contractor must also comply with the SCWRO which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months, shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

#### Section 28.0 Small Business Enterprises.

28.1 Contractor hereby agrees and obligates itself to utilize the services of Small Business Enterprise (hereinafter referred to as "SBE") firms designated in its proposal

(specifically, a Ten Percent (10 %) SBE Subcontractor/Sub-consultant level of participation; a Five Percent (5%) Local Business Enterprise (hereinafter referred to as “LBE”) Subcontractor/Sub-consultant level of participation; and as a subset of the LBE percentage, a Three Percent (3%) Local Small Business Enterprise (hereinafter referred to as “LSBE”) Subcontractor/Sub-consultant level of participation; and a Three Percent (3%) Disabled Veteran Business Enterprise (hereinafter referred to as “DVBE”) Subcontractor/Sub-consultant level of participation for the required Project designated Work).

28.2 Contractor hereby further agrees and obligates itself to strictly comply with all the Rules and Regulations (hereinafter referred to as “Rules”) of LAWA’s Small Business Enterprise Pilot Program (hereinafter referred to as “Program”).

28.3 Failure to comply with any of the Program’s requirements shall subject the Contractor to the “Penalties” set forth in the Program’s Rules.

28.4 Contractor shall submit, on a monthly basis, together with its invoice for payment the SBE Utilization Form listing the SBE Subcontracts utilized during the reporting period. Contractor shall cooperate with LAWA personnel in providing such information as shall be requested by LAWA in order to ensure compliance with the provisions of this section. LAWA will not process or pay Contractor’s subsequent invoices if the SBE Utilization Forms are not timely submitted or if the Contractor fails to cooperate with LAWA personnel by promptly providing any and all information related to SBE participation request by LAWA.

28.5 Failure to comply with any of the terms of this Section (or the terms of this Contract) shall constitute a material breach of contract and may result in the Contract being deemed “Non-Responsible”. (Section 10.40 et seq. of the Los Angeles Administrative Code.)

#### Section 29.0 Municipal Lobbying Ordinance.

29.1. Contractor shall comply with the provisions of the City of Los Angeles Municipal Lobbying Ordinance, Municipal Code Section 48.01 et seq., as amended.

#### Section 30.0 Compliance with Los Angeles City Charter Section 470(c)(12) and 609(e).

30.1 The Contractor, other underwriting firm members of the underwriting syndicate, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Sections 470(c)(12), 609(e) and related ordinances, regarding limitations on campaign contributions and fundraising to certain elected City officials or candidates for elected City office. Gifts to elected officials and certain City officials are also limited. Additionally, Contractor and other underwriting firm members of the underwriting syndicate are required to provide and update certain information to the City as specified by law. Any Contractor and other underwriting firm members of the underwriting syndicate subject to Charter Section 470(c)(12)



and 609(e), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding City of Los Angeles Campaign Contribution and Fundraising Restrictions.

As provided in Charter Sections 470(c)(12), 609(e) and related ordinances, you are subcontractor or underwriting firm on City of Los Angeles Contract/Resolution #\_\_\_\_\_. Pursuant to City Charter Section 470(c)(12) and 609(e), underwriting firm, subcontractor and principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Additionally, gifts are limited to elected officials and certain City officials. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 10 business days. Failure to comply may result in termination of contract or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

30.2 Contractor, underwriting firms, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Contract and pursue any and all legal remedies that may be available.

Section 31.0 Miscellaneous Provisions.

31.1 Fair Meaning. The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either City or Contractor.

31.2 Section Headings. The section headings appearing herein are for the convenience of City and Contractor, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Contract.

31.3 Void Provisions. If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract, and all such other provisions shall remain in full force and effect.

31.4 Two Constructions. It is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

31.5 Governing Law. This Contract shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County.

31.6 Gender. The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

31.7 Ordinance and Code Language Governs. City of Los Angeles ordinance and code exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.

31.8 Amendments to Ordinances and Codes. The obligation to comply with any ordinances and codes which have been incorporated into this Contract by reference shall extend to any amendments which may be made to those ordinances and codes during the term of this Contract.

31.9 No Exclusive Right. No provision of this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal Aviation Act, 49 U.S.C. 40103(e) and 40107(a)(4)(Public Law No. 103-272).

31.10 Amendment. All amendments hereto shall be in writing and signed by the persons authorized to bind the parties thereto.

31.11 Force Majeure. Notwithstanding any other provision hereof, neither the Contractor nor the City shall be held responsible or liable for failure to meet their respective obligations under this Contract, if such failure shall be due to causes beyond the Contractor's or City's control. Such causes include but are not limited to: strikes, fire, flood, civil disorder, acts of God or the public enemy, acts of the Federal Government or any unit of state or local government in either sovereign or contractual capacity, insurrection, epidemics, freight embargos or delay in transportation, and changes in federal, state or local laws.

Section 32.0 Assignment of Anti-Trust Claims. Pursuant to California Government Code Sections 4550 et seq. regarding Anti-Trust Claims, it is the policy of the City of Los Angeles to inform each Proposer that in submitting a proposal to LAWA the Proposer offers and agrees to assign LAWA all rights, title and interest in and to all causes of action it may have under the Clayton Act or Cartwright Act, arising from purchases of goods, services or materials. This assignment is made and becomes effective at the time LAWA tenders final payment to the Proposer.

Section 33.0 Iran Contracting Act of 2010 Compliance Affidavit. Contractor shall comply with the provision of the Iran Contracting Act of 2010 throughout the term of the Contract. Contract's executed Iran Contracting Act of 2010 Compliance Affidavit is attached hereto in Contractor's Bid.

Section 34.0 Entire Contract.

34.1. This Contract contains the entire agreement between the parties hereto and supersedes any and all prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements or understandings, oral or written, between and among the parties relating to the subject matter contained in this Contract which are not fully set forth herein. This is an integrated Contract.

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SIGNATURE BLOCK

IN WITNESS WHEREOF, City has caused this Contract to be executed by the Chief Executive Officer of its Department of Airports and Contractor has caused the same to be executed by its duly authorized officers and its corporate seal to be hereunto affixed all as of the day and year first hereinabove written.

This Contract may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document."

APPROVED AS TO FORM:

CITY OF LOS ANGELES

MICHAEL N. FEUER,  
City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By:   
Deputy/Assistant City Attorney

By: \_\_\_\_\_  
Chief Executive Officer  
Department of Airports

By: \_\_\_\_\_  
Chief Financial Officer  
Deputy Executive Director  
Department of Airports

EMS BRÜEL & KJAER INC.

By: \_\_\_\_\_  
Signature (Secretary/Treasurer/CFO)

By:   
Signature

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

  
Print Name

\_\_\_\_\_  
Print Title

  
Print Title