

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
TRELLEBORG MARINE SYSTEMS DENMARK A/S

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and TRELLEBORG MARINE SYSTEMS DENMARK A/S, a Denmark corporation, Samsøvej 31 B, DK-8210 Aarhus V, Denmark ("Consultant").

WHEREAS, City requires a comprehensive Portable Piloting Unit System for use by the City's Harbor Department ("Department") Port Pilots Division to assist in the navigation of ocean going ships at the Port of Los Angeles; and

WHEREAS, City has utilized Consultant's Portable Piloting Unit System for the previous three years and it is more feasible and cost effective to continue to use Consultant's proprietary hardware and software as a navigational aid at the Port of Los Angeles; and

WHEREAS, the Port Pilots Division will require training, on-going maintenance, repairs and help desk support for the Portable Piloting Unit System during the term of the Agreement; and

WHEREAS, City requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the City in the continued use, training, maintenance and repair of the Portable Piloting Unity System; and

WHEREAS, Consultant possesses extensive experience in the development, maintenance and training regarding the use of the Portable Piloting Unit System; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, the products and certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work"). In the event of a conflict

between the terms of this Agreement and the terms set forth in Exhibit A, the terms of this Agreement shall prevail.

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 11 (Termination) hereof.

C. Consultant shall provide Executive Director with reasonable advance written notice if it requires access to premises of Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Executive Director, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that such areas may be occupied or used by tenants or

contractors of City and that access rights granted by Department to Consultant shall be consistent with any such occupancy or use.

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be January 25, 2021 upon its execution by the Executive Director after authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement be signed by the Executive Director until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from January 25, 2021 upon execution by the Executive Director and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the

Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit A.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit A), shall be One Hundred Twenty-Two Thousand Nine Hundred and Eighty Dollars (\$122,980).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit B) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

6. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article 6 shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

7. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

8. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See <https://finance.lacity.org/how-register-btrc>.

9. INDEMNIFICATION

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. Notwithstanding the foregoing, and so long as Consultant is not in breach of any term of this Agreement, Consultant's liability shall not exceed the Compensation amount in Section V unless covered by the insurance set forth in Section 10 of this Agreement.

10. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Where Consultant provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(2) Technology Errors and Omissions Liability Insurance

Consultant is required to provide Technology Errors and Omissions Liability Insurance with respect to negligent or wrongful acts, errors or omissions, in rendering or failing to render computer or information technology services or technology products in connection with the professional services to be provided under this Agreement. This insurance policy shall include coverage for Privacy and Network Security and protect against claims arising from all products and services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability. The limits disclosed herein shall neither increase nor decrease Consultant's liability as defined elsewhere in this Agreement.

Consultant certifies that it now has Technology Errors and Omissions Liability Insurance in the amount of One Million Dollars (\$1,000,000) per claim/aggregate including Notification Costs, which shall cover the work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

B. Insurance Procured by Consultant on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 9, and where Consultant is required to name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause City to be named as an additional insured on all policies it procures in connection with this Article 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. ____, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article 10 shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with

the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> and submit the appropriate proof of insurance on Consultant's behalf.

Upon request by City, Consultant shall furnish a copy of the binder of insurance and/or a full certified policy for any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(4) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at <https://kwikcomply.org/> a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

D. Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
2. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
5. Consultant provides the name and address of its claims administrator.
6. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

E. Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

11. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

12. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of the Department.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article 1. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

13. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated

and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit C.

14. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit D.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

15. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and the Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity,

and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

16. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

17. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

18. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Consultant in the performance of this Agreement.

19. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which

case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

20. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

21. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Executive Director, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

22. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

23. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

24. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

25. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit E.

26. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its 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 Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement 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.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

27. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

28. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

29. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

30. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

31. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

32. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

33. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

34. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

35. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____, 2021

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

TRELLEBORG MARINE SYSTEMS DENMARK A/S

Dated: 19/03, 2021

By: Tommy Mikkelsen
MANAGING DIRECTOR
(Print/type name and title)

Attest: ERICA ALLEN
SALES COORDINATOR
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

March 25, 2021
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: Janna
Heather M. McCloskey, Deputy



Attachments

Rev. 7/26/19



Date: 3/23/21

Contractor/Vendor Name: Trelleborg Marine Systems Denmark A/S

Account#	54110	W.O. #	
Ctr/Div#	0414	Job Fac. #	
Proj/Prog#	000		
Budget FY:		Amount:	
FY 20/21		\$31,000	
FY 21/22		\$29,940	
FY 22/23		\$29,940	
<u>For Acct/Budget Div. Use Only</u>			
Verified by:		Digitally signed by Melody Ugaldé Date: 2021.03.23 16:01:33 -0700	
Verified Funds Available:		Digitally signed by Frank Liu Date: 2021.03.24 10:18:13 -0700	
Date Approved:	<u>3/24/21</u>		



Account#	55160	W.O. #	
Ctr/Div#	0414	Job Fac. #	
Proj/Prog#	000		
Budget FY:		Amount:	
FY 21/22		\$11,600	
FY 22/23		\$20,500	
<u>For Acct/Budget Div. Use Only</u>			
Verified by:		Digitally signed by Melody Ugaldé Date: 2021.03.23 16:03:06 -0700	
Verified Funds Available:		Digitally signed by Frank Liu Date: 2021.03.23 19:36:48 -0700	
Date Approved:	<u>3/23/21</u>		

Exhibit A



TRELLEBORG

SafePilot solution by TMS Denmark

Sommervej 31b - DK8210 Aarhus v

Quotation # 20122
Revision # 2
Client Port of LA
Project Year 1 - 2021
Prepared by Mathew Kearns
Date Feb 09 2021

Price Summary

		USD
Positioning Sensors & extended warranty		900
SafePilot Subscription		25,500
SafePilot Cloud for purchased SafePilot Software monthly		4,440
Total	USD	30,840

Positioning Sensors & extended warranty

Product No	Description	USD	Qty	Total
90-1341	1 year Extended warranty on existing 4 no CAT ROT's & CAT 1's purchased 2017, coverage for 2021	900	1	900
Total			USD	900

SafePilot Subscription

Product No	Description	USD per month	Qty of users	Annual price
90-1252	SafePilot Pro (Subscription) For use with purchased hardware Price pr. User	45	17	9180
90-1255	SafePilot River module Price pr. user	15	17	3060
90-1253	SafePilot Docking module Price pr. user	25	17	5100
90-1261	SafePilot Cloud Price pr. user	15	17	3060
90-1266	Care Pack Price pr. User	25	17	5100
Total			USD	25,500

SafePilot Cloud for purchased SafePilot Software monthly

Product No	Description	USD per month	Qty	Annual price
90-1270	SafePilot Cloud Hosting - Data backup of recordings from iPads - AIS input - Realtime target sharing - Shared annotations fenderlines routes - Chart managment Price pr. Server per month	370	12	4,440
Total			USD	4,440

Terms	Description
Payment by:	Bank transfer
Currency:	US Dollars
Pricing:	All prices are exclusive of any import tax, VAT and other duties unless otherwise specifically mentioned. In the case that an indicative price in foreign currency is provided this is based on the exchange rate in effect on the date of this quotation and it is subject to adjustment using the rate of exchange in effect at the date of acknowledgement of purchase order or contract signature. All prices are based on a joint order of all equipment quoted which means if some of the equipment is withdrawn from the order, prices may be subject to change.
Travel:	Unless otherwise specifically mentioned travel cost, (e.g. air ticket, car rental), accommodation, and living expenses are not included in the above-mentioned prices and will be charged separately at cost plus 15%.
Installation:	Implementation/commissioning and training time are offered as dayrates. In case it exceeds the quoted days, TMS-DK will invoice for further days when TMS-DK is not responsible for the delay.
Charts:	Charts run on a 12 month subscription and are automatically renewed every year. Charts will be invoiced once a year. Subscription can be terminated one month before renewal date.
Delivery Terms:	Delivery terms are DAP (Incoterms 2010).
Warranty:	12 months after date of delivery. If extended hardware warranty is quoted, refer to that.
Validity:	This quotation remains valid until 30 days after date of issue.
General conditions:	The Terms & Conditions of Trelleborg Marine Systems Denmark (TMS-DK) doc. no. 1440 0001 rev. D apply (available upon request) if not otherwise specifically mentioned.
Force Majeure:	TRELLEBORG MARINE SYSTEMS DENMARK A/S shall not be liable for any delay under this contract caused directly or indirectly by Acts-of-God, governmental interventions, any enemy actions, strikes, industrial disputes, fire, flood, riots, acts or omissions by the client or any other cause beyond the reasonable control of TRELLEBORG MARINE SYSTEMS DENMARK A/S.



SafePilot solution by TMS Denmark

Sommervvej 31b - DK8210 Aarhus v

Quotation # 20122
Revision # 2
Client Port of LA
Project Year 2 - 2022
Prepared by Mathew Kearns
Date Feb 09 2021

Price Summary

		USD
Positioning Sensors & extended warranty		10,350
SafePilot Subscription		25,500
SafePilot Cloud for purchased SafePilot Software monthly		4,440
Total	USD	40,290

Total Packing and freight		210
Total	USD	210

Positioning Sensors & extended warranty

Product No	Description	USD	Qty	Total
90-1582	CAT ROT v4 AIS pilot plug adapter Integrated Rate sensor providing real time ROT and Heading with decimal degree accuracy	2,035	2	4,070
90-1583	CAT I v4 GPS/GLONASS receiver (L1) To be used with CAT ROT providing independent positioning including SBAS (EGNOS, WAAS, MSAS etc.)	2,465	2	4,930
90-1341	2 year Extended warranty on 3 no CAT ROT's & CAT 1's. 2 sets purchased Aug 2020 & 1 set Feb 2021, coverage for 2022 & 23 - 2 years total (2021 covered under normal warranty)	1,350	1	1,350
Total			USD	10,350

SafePilot Subscription

Product No	Description	USD per month	Qty of users	Annual price
90-1252	SafePilot Pro (Subscription) For use with purchased hardware Price pr. User	45	17	9180
90-1255	SafePilot River module Price pr. user	15	17	3060
90-1253	SafePilot Docking module Price pr. user	25	17	5100
90-1261	SafePilot Cloud Price pr. user	15	17	3060
90-1266	Care Pack Price pr. User	25	17	5100
Total			USD	25,500

SafePilot Cloud for purchased SafePilot Software monthly

Product No	Description	USD per month	Qty	Annual price
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90-1270	SafePilot Cloud Hosting	370	12	4,440
	- Data backup of recordings from iPads			
	- AIS Input			
	- Realtime target sharing			
	- Shared annotations fenderlines routes			
	- Chart managment			
	Price pr. Server per month			

Total			USD	4,440
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Product No	Description	USD	Qty	Total
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Pack	Packaging and Shipment 5-10 kg 2022 CAT's	210	1	210
	Total		USD	210

Terms	Description
Payment by:	Bank transfer
Currency:	US Dollars
Pricing:	All prices are exclusive of any import tax, VAT and other duties unless otherwise specifically mentioned. In the case that an indicative price in foreign currency is provided this is based on the exchange rate in effect on the date of this quotation and it is subject to adjustment using the rate of exchange in effect at the date of acknowledgement of purchase order or contract signature. All prices are based on a joint order of all equipment quoted which means if some of the equipment is withdrawn from the order, prices may be subject to change.
Travel:	Unless otherwise specifically mentioned travel cost, (e.g. air ticket, car rental), accommodation, and living expenses are not included in the above-mentioned prices and will be charged separately at cost plus 15%.
Installation:	Implementation/commissioning and training time are offered as dayrates. In case it exceeds the quoted days, TMS-DK will invoice for further days when TMS-DK is not responsible for the delay.
Charts:	Charts run on a 12 month subscription and are automatically renewed every year. Charts will be invoiced once a year. Subscription can be terminated one month before renewal date.
Delivery Terms:	Delivery terms are DAP (Incoterms 2010).
Warranty:	12 months after date of delivery. If extended hardware warranty is quoted, refer to that.
Validity:	This quotation remains valid until 30 days after date of issue.
General conditions:	The Terms & Conditions of Trelleborg Marine Systems Denmark (TMS-DK) doc. no. 1440 0001 rev. D apply (available upon request) if not otherwise specifically mentioned.
Force Majeure:	TRELLEBORG MARINE SYSTEMS DENMARK A/S shall not be liable for any delay under this contract caused directly or indirectly by Acts-of-God, governmental interventions, any enemy actions, strikes, industrial disputes, fire, flood, riots, acts or omissions by the client or any other cause beyond the reasonable control of TRELLEBORG MARINE SYSTEMS DENMARK A/S.

032020v17



TRELLEBORG

SafePilot solution by TMS Denmark

Sommervvej 31b - DK8210 Aarhus v

Quotation # 20122
Revision # 2
Client Port of LA
Project Year 3 - 2023
Prepared by Mathew Kearns
Date Feb 09 2021

Price Summary

		USD	
Positioning Sensors & extended warranty		18,450	
SafePilot Subscription		25,500	
SafePilot Cloud for purchased SafePilot Software monthly		4,440	
Total	USD	48,390	
<hr/>			
Total Packing and freight		210	
Total	USD	210	

Positioning Sensors & extended warranty

Product No	Description	USD	Qty	Total
90-1582	CAT ROT v4 AIS pilot plug adapter Integrated Rate sensor providing real time ROT and Heading with decimal degree accuracy	2,035	4	8,140
90-1583	CAT I v4 GPS/GLONASS receiver (L1) To be used with CAT ROT providing independent positioning including SBAS (EGNOS, WAAS, MSAS etc.)	2,465	4	9,860
90-1341	1 year Extended warranty on 2 no CAT ROT's & CAT 1's purchased beginning 2022, coverage for 2023 (2022 covered under normal warranty)	450	1	450
Total			USD	18,450

SafePilot Subscription

Product No	Description	USD per month	Qty of users	Annual price
90-1252	SafePilot Pro (Subscription) For use with purchased hardware Price pr. User	45	17	9180
90-1255	SafePilot River module Price pr. user	15	17	3060
90-1253	SafePilot Docking module Price pr. user	25	17	5100
90-1261	SafePilot Cloud Price pr. user	15	17	3060
90-1266	Care Pack Price pr. User	25	17	5100
Total			USD	25,500

SafePilot Cloud for purchased SafePilot Software monthly

Product No	Description	USD per month	Qty	Annual price
90-1270	SafePilot Cloud Hosting - Data backup of recordings from iPads - AIS input - Realtime target sharing - Shared annotations fenderlines routes - Chart management Price pr. Server per month	370	12	4,440
Total			USD	4,440

Product No	Description	USD	Qty	Total
Pack	Packaging and Shipment 5-10 kg	210	1	210
Total			USD	210

Terms**Description**

Payment by:	Bank transfer
Currency:	US Dollars
Pricing:	All prices are exclusive of any import tax, VAT and other duties unless otherwise specifically mentioned. In the case that an indicative price in foreign currency is provided this is based on the exchange rate in effect on the date of this quotation and it is subject to adjustment using the rate of exchange in effect at the date of acknowledgement of purchase order or contract signature. All prices are based on a joint order of all equipment quoted which means if some of the equipment is withdrawn from the order, prices may be subject to change.
Travel:	Unless otherwise specifically mentioned travel cost, (e.g. air ticket, car rental), accommodation, and living expenses are not included in the above-mentioned prices and will be charged separately at cost plus 15%.
Installation:	Implementation/commissioning and training time are offered as dayrates. In case it exceeds the quoted days, TMS-DK will invoice for further days when TMS-DK is not responsible for the delay.
Charts:	Charts run on a 12 month subscription and are automatically renewed every year. Charts will be invoiced once a year. Subscription can be terminated one month before renewal date.
Delivery Terms:	Delivery terms are DAP (Incoterms 2010).
Warranty:	12 months after date of delivery. If extended hardware warranty is quoted, refer to that.
Validity:	This quotation remains valid until 30 days after date of issue.
General conditions:	The Terms & Conditions of Trelleborg Marine Systems Denmark (TMS-DK) doc. no. 1440 0001 rev. D apply (available upon request) if not otherwise specifically mentioned.
Force Majeure:	TRELLEBORG MARINE SYSTEMS DENMARK A/S shall not be liable for any delay under this contract caused directly or indirectly by Acts-of-God, governmental interventions, any enemy actions, strikes, industrial disputes, fire, flood, riots, acts or omissions by the client or any other cause beyond the reasonable control of TRELLEBORG MARINE SYSTEMS DENMARK A/S.

032020v17



MAIN AGREEMENT

This Main Agreement is entered into

between **TRELLEBORG MARINE SYSTEMS DENMARK A/S**
CVR-no. 34452458
Sommervvej 31B
8210 Aarhus V
Denmark
("TMS")

AND **LOS ANGELES PILOT SERVICE**
USA

1. SCOPE OF THE AGREEMENT

1.1 This Main Agreement and its appendices set out the terms and conditions applicable for TMS' delivery to Customer of the Products and Services listed below.

2. PRODUCTS AND SERVICES

2.1 Under this Main Agreement, TMS will deliver to Customer the following Products and Services:

2.1.1 Reference is made to quote no 20122, Exhibit B where a detailed list and a description of the Products and Services to be delivered to Customer is available.

3. PRICE AND PAYMENT – SUBSCRIPTION ONLY LISTED IN SECTION 4.2

3.1 The Services are subject to an annual payment of 29,940 USD recurring for:

3 years

Thus, Customer's payment to TMS per the 3 year period amounts to 89,820.



3.2 In addition, the payment terms in the Product-Specific Terms and the General Terms and Conditions attached hereto will apply.

4. SUBSCRIPTION-BASED LICENSE TO SAFEPILOT

4.1 Customer's subscription-based licensing of the Software including modules is subject to full payment of all license fees and compliance with TMS' Software Subscription Terms.

4.2 Customer takes out the following subscriptions: -

Base subscription

SafePilot Pro Amount: 17 Unit price per month: USD 45 Subtotal: 765

Modules

River Amount: 17 Unit price per month: USD 15 Subtotal: 255

Docks Amount: 17 Unit price per month: USD 25 Subtotal: 425

SafePilot Cloud user Amount: 17 Unit price per month: USD 15 Subtotal: 255

SafePilot Cloud Hosting Amount: 1 Unit price per month: USD 370 Subtotal: 370

Care Pack Amount: 17 Unit price per month: USD 25 Subtotal: 425

Monthly subscription fee: 2,495

Per annum fee: 29,940

5. PURCHASED EQUIPMENT/ SERVICES

5.1 TMS' provision of Services to Customer is subject to full and timely payment of all fees and compliance with TMS' Service and Maintenance Terms.

5.2 TMS will provide to Customer the following hardware / extended warranty:

Year 2 - 2022			
<input checked="" type="checkbox"/> CAT ROT	Price: USD 2,035	QTY 2	Subtotal: 4,070
<input checked="" type="checkbox"/> CAT 1	Price: USD 2,465	QTY 2	Subtotal: 4,930
			Total USD
Year 3 - 2023			
<input checked="" type="checkbox"/> CAT ROT	Price: USD 2,035	QTY 4	Subtotal: 8,140
<input checked="" type="checkbox"/> CAT 1	Price: USD 2,465	QTY 4	Subtotal: 9,860
			Total USD

6. DELIVERY

6.1 TMS will deliver the above Products and/or Services no later than [TBC] after signing of this Main Agreement and TMS' receipt of payment as agreed between the Parties.

6.2 TMS will deliver the above Products DAP according to Incoterms 2010.



7. WARRANTY PERIOD

7.1 Any warranties given by TMS shall apply in 12 months after the date of delivery of purchased units.

7.2 Any warranties given by TMS shall apply in the following period after the date of delivery:

Extended Warranty Period year 1

4 no CAT ROT's & CAT 1's purchased 2017, coverage for 2021

One year Extended Warranty: USD 900

Extended Warranty Period year 2

3 no CAT ROT's & CAT 1's. 2 purchased Aug 2020 & 1 Feb 2021, coverage for 2022 & 23 - 2 years total (2021 covered under normal warranty)

Two year Extended Warranty: USD 1,350

Extended Warranty Period year 3

2 no CAT ROT's & CAT 1's purchased beginning 2022, coverage for 2023 (2022 covered under normal warranty)

One year Extended Warranty: USD 450

8. VALIDITY

8.1 Unless otherwise agreed in writing, this Main Agreement shall become effective as from [the date when both Parties have signed the Main Agreement].

9. CONTRACTUAL BASIS AND PRIORITY OF DOCUMENTS

9.1 By signing this Main Agreement, Customer accepts that the following Product-Specific Terms and the General Terms and Conditions forms an integral part of this Main Agreement:

- TMS' Sales Terms
- TMS' Software License Terms
- TMS' Software Subscription Terms

9.2 The definitions agreed in the Product-Specific Terms and in the General Terms and Conditions shall also apply in this Main Agreement.

9.3 In case of any discrepancy between this Main Agreement, the Product-Specific Terms, the General Terms and Conditions and any other documents, the following order of importance shall apply:

- i. This Main Agreement (without appendices)
- ii. The Product-Specific Terms
- iii. The General Terms and Conditions
- iv. Other documents agreed between the Parties



9.4 This Main Agreement replaces all prior agreements between the Parties in relation to the Products and/or Services in question. Standard terms other than those contained in this Main Agreement and its appendices are thus hereby expressly agreed to be ineffective between the Parties.

10. AMENDMENTS TO THE AGREEMENT

10.1 [insert potential amendments]

10.2 [Breach of obligation of confidentiality]

10.3 [Customer agree that money damages may not be a sufficient remedy for breach of Customer's obligation of confidentiality, cf. the General Terms and Conditions attached hereto, and, accordingly, that TMS is entitled to seek other statutory relief, including to obtain an injunction or order for specific performance, to restrain any breach or threatened breach of the confidentiality provisions of this Agreement with appendices, in addition to all other remedies available to TMS at law. Furthermore, TMS is entitled to claim agreed penalty in the amount of EUR [***] for each breach of the confidentiality provisions. If a breach of the confidentiality provisions consists of an ongoing condition, the confidentiality provisions shall be considered breached for each calendar month. Payment of agreed penalty does not automatically entail expiry or termination of this Agreement or any of the obligations herein].

FOR TRELLEBORG MARINE SYSTEMS DENMARK A/S

**FOR LOS ANGELES PILOT SERVICE
USA**

Signature
Name:
Position:

Signature
Name:
Position:



GENERAL TERMS AND CONDITIONS

1. GENERAL

- 1.1 These General Terms and Conditions applies to all Products and/or Services delivered by TMS, including any sale and lease of hardware and software and any services and maintenance thereof.
- 1.1 These General Terms and Conditions constitute an appendix to and an integral part of each Main Agreement entered into between TMS and Customer.
- 1.2 In addition to these General Terms and Conditions applicable to TMS' delivery of Products and/or Services to Customer in general, the Product-Specific Terms stated in each Main Agreement will apply to the specific delivery of the Products and/or Services in question. In the event of any discrepancy between such Product-Specific Terms and these General Terms and Conditions, the Product-Specific Terms shall prevail.

2. DEFINITIONS

- 2.1 The following words and expressions and derivatives thereof, appearing in these General Terms and Conditions, any Product-Specific Terms or Main Agreements, shall have the meaning hereby ascribed to it:
 - 2.1.1 "**Affiliate**" means any entity, which controls, is controlled by, or is under common control with a Party, where "control" means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity.
 - 2.1.2 "**Authorised Representatives**" means associates, directors, officers or employees of a Party or of an associate to a Party, and a Party's professional advisers.
 - 2.1.3 "**Client**" means the person or company to whom Customer is contracted to supply the Products and/or Services delivered by TMS.
 - 2.1.4 "**Customer**" means the person or company who accepts a quotation in a Main Agreement of TMS.
 - 2.1.5 "**Disclosing Party**" means the Party which discloses Proprietary Information to the Receiving Party.
 - 2.1.6 "**Documentation**" means end user documentation at the time of initial purchase published and made generally available by TMS for the Software in the form of manuals and function descriptions as modified by TMS from time to time.
 - 2.1.7 "**Extended Warranty Period**" means the interval of months that the Parties according to the Main Agreement have agreed that any warranty given by TMS should apply.
 - 2.1.8 "**General Terms and Conditions**" means these standard terms and conditions.
 - 2.1.9 "**Hardware**" means all products delivered by TMS that are not Software.
 - 2.1.10 "**Main Agreement**" means any contracts of sale, lease, subscription of Products and/or Services concluded by TMS and Customer.
 - 2.1.11 "**Milestone Date**" means the due date agreed between the Parties in case of milestone payment.
 - 2.1.12 "**Parties**" means TMS and Customer collectively.



- 2.1.13 "Party" means TMS or Customer as the context of the particular clause requires.
- 2.1.14 "Products" means all products delivered by TMS, including Hardware and/or Software, to be purchased, leased or subscribed to by Customer.
- 2.1.15 "Product-Specific Terms" means TMS' Sales Terms, Software License Terms, Lease Terms, Subscription Terms and Service and Maintenance Terms applicable for TMS' several Products and Services and attached to any concluded Main Agreement.
- 2.1.16 "Proprietary Information" means any information exchanged between the Parties that can either (i) be reasonably described as sensitive, confidential or proprietary information, (ii) is the solely owned intellectual property of the Disclosing Party, or (iii) marked as confidential.
- 2.1.17 "Receiving Party" means the Party which receives Proprietary Information from the Disclosing Party.
- 2.1.18 "Recurring Period" means the interval of months that the Parties according to the Main Agreement have agreed that recurring fees are to be invoiced to the Customer.
- 2.1.19 "Services" means any service performed by TMS in relation to the Products, including maintenance, described in the Service and Maintenance Terms.
- 2.1.20 "Software" means the SafePilot software, including the agreed upon modules.
- 2.1.21 "Subcontractor" means any person or company to whom TMS subcontracts part of the scope of work under a Main Agreement.
- 2.1.22 "TMS" means Trelleborg Marine Systems Denmark A/S, CVR no. 34452458.
- 2.2 Further words and expressions may be defined in each of the Product-Specific Terms, Main Agreements or any other appendices thereto, and such definitions shall apply for the entire agreement, in addition to the above definitions.

3. ORDER AND SPECIFICATIONS

- 3.1 Any quotation made by TMS does not constitute an offer to sell, lease and/or licensing. Any order raised by Customer in response to a quotation from TMS shall be deemed as an offer to buy, lease and/or licensing in accordance with TMS' quotation. No order submitted by Customer shall be deemed to be accepted by TMS unless confirmed in writing by TMS and formalized in a written Main Agreement signed by both Parties.
- 3.2 Customer shall be responsible to TMS for ensuring the accuracy of the details of any order (including any applicable specifications) submitted by Customer, and for giving TMS any necessary information relating to the ordered Products within a sufficient time to enable TMS to perform the Main Agreement in accordance with its terms.
- 3.3 If the Products are to be manufactured or any process is to be applied to the Products by TMS in accordance with a specification submitted by Customer, Customer shall indemnify TMS against all loss, damages, costs and expenses incurred by TMS as a result of any claim for a potential infringement of any patents, copyrights, design rights, trademarks or other intellectual property rights of any third party as a consequence of TMS' use of Customer's specifications.
- 3.4 TMS reserves the right to make any changes in Customer's specification of the Products, if the Products are to comply with any applicable statutory or EC requirements, on the condition that such changes do not materially affect the quality or performance of the Products.



3.5 Any additional or different terms or conditions contained within Customer's order shall be deemed as objected to by TMS without the requirement for notice of such objection and shall in no way be binding on TMS unless expressly agreed.

4. DELIVERY TERMS

4.1 If no time of delivery has been agreed in a Main Agreement, either Party may, subject to reasonable written notice, demand performance of the Main Agreement within a reasonable time.

4.2 Any agreed time of delivery is approximate and delivery in part is allowed.

4.3 If not otherwise specifically quoted, delivery terms are Ex Works TMS (Incoterms 2010).

5. PRICES AND PAYMENT

5.1 All prices shall be in Euros (EUR) exclusive of any import tax, VAT and other duties, unless otherwise specifically stated. In the case that an indicative price in foreign currency has been provided, this is based on the exchange rate in effect on the date of this quotation and it is subject to adjustment using the rate of exchange in effect at the date of concluding a Main Agreement.

5.2 TMS has the right to (i) adjust any recurring fees (such as recurring license fees, subscription fees, rent, lease, recurring service and maintenance fees, or any other fee not to be paid as a one-off payment) yearly on 1 January with 2 %, and/or (ii) otherwise to adjust the recurring fees upon 90 days' prior written notice to Customer, such increase to take effect as of the next recurring period (as applicable), at the earliest.

5.3 In the absence of satisfactory evidence of exemption supplied to TMS by Customer, Customer shall pay in addition to the purchase price, all taxes, duties, excises, or other charges for which TMS may be responsible for collection or payment to any government (national, state, or local) upon, measured by or relating to the importation, exportation, production or any phase or part of the production, storage, sale or transportation and/or use of the Products.

5.4 Unless otherwise agreed, any potential travel cost, (e.g. air ticket, car rental, etc.), accommodation, and living expenses are not included in the prices stated in the Main Agreement and will be charged separately at cost price plus 15%.

5.5 Unless otherwise agreed, implementation/commissioning and training time are offered as day rates. In case the quoted days are exceeded, TMS will invoice for such further days when TMS is not responsible for the delay.

5.6 Unless otherwise agreed, any potential revision of Documentation is included in the prices stated in the Main Agreement. However, if TMS is requested to revise such Documentation more than three times, any such additional revision will be charged separately at an hourly rate for the actual time used.

5.7 Unless otherwise agreed, TMS will invoice all amounts and payments to be made in accordance with the Main Agreement upon delivery of the Products (including upon delivery of partial deliveries). All invoices are due for payment 30 days after the date of issue.

5.8 If milestone payment is agreed between the Parties, the agreed milestone payment is - whether or not the Products has in fact been delivered - due at the agreed Milestone Date, if such potential delay in delivery is caused by Customer.



5.9 In case of late payment, TMS is, without prejudice to any other right or remedy available, provided that TMS has notified Customer in writing of the overdue amount, entitled, 30 days after such written notice have been given to Customer, to cancel the Main Agreement in question or suspend any further deliveries to Customer. In addition, TMS is entitled to default interest of the unpaid amount at the rate of two percent per month until payment in full is made and other fees related to the late payment in accordance with the Danish Act on Interest for Late Payment ("Renteloven").

6. CHANGE OF ORDERS

6.1 If Customer issues a request for a change of the provisions in a Main Agreement, including a change of the Products and/or Services to be delivered, and/or variations to the Products, which are in the capacity and resources of TMS, TMS has the right to either approve, reject or request further amendments to such change request. Any change requests must be issued in writing.

6.2 If a change request is approved by TMS, TMS shall upon receipt of such request with undue delay furnish to Customer details of any change to price or time of delivery. On receipt of the change in price and/or delivery time, Customer shall issue a written change order to TMS. The change of the Main Agreement will be implemented only on TMS's acceptance of Customer's change order. If no acceptance is given, the concluded Main Agreement will remain in force.

6.3 Any change orders shall be governed by these General Terms and Conditions.

7. TMS' GENERAL OBLIGATIONS

7.1 TMS shall deliver to Customer the Products and/or Services in accordance with the concluded Main Agreement, these General Terms and Conditions, and the relevant Product-Specific Terms.

7.2 TMS shall ensure that all Products delivered are free from all liens and/or retention of title claims from any third party.

7.3 TMS shall perform its obligations in a professional manner, and, unless otherwise set out in the concluded Main Agreement, in accordance with the methods and standards usually applied by TMS for such deliveries.

8. CUSTOMER'S GENERAL OBLIGATIONS

8.1 In order for TMS to be able to perform its obligations under a Main Agreement, Customer shall loyally participate in the performance hereof as set out below:

- a) Customer is responsible for having the equipment and software which TMS has specified as a prerequisite for using the Products, or which equipment and software are otherwise clearly required for such use.
- b) Unless otherwise agreed, Customer shall be responsible for the completion of backups of Customer's data.
- c) Customer shall contribute to the performance of the Main Agreement.
- d) Customer must ensure that its other business partners will loyally cooperate with TMS and provide any information which TMS deems necessary for the performance of the Main Agreement.
- e) Customer must ensure that TMS is given all relevant and necessary information, including instructions, regulations, and procedures to the effect that TMS will be able to deliver the Products to Customer in accordance with the Main Agreement. Customer shall otherwise contribute to the delivery of the Products as reasonably requested by TMS from time to time.



- f) Customer is responsible for specifying the requirements in order to ensure that the Products comply with all applicable regulatory, administrative and/or other requirements of the geographical areas in which Customer intends to use the Products.

9. EXPORT AND IMPORT LICENSES

- 9.1 TMS shall take all actions to obtain the export licenses from relevant Danish authorities for the Services and Products delivered to Customer.
- 9.2 Customer shall apply for any other government permission required for importing the Products, including software, testing equipment, and other relevant goods.
- 9.3 In the event export licenses and/or import permissions are not obtained or are withdrawn, Customer or TMS may without notice terminate the Main Agreement in question dependent upon such licenses/permissions.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All intellectual property rights and other rights, including without limitation patents, utility models, design rights, trademarks, copyright, right to software and data (including that stored on computers and computer aided design models), documentation and knowhow, in and to the Products and Services and the results thereof, shall in any event remain the property of TMS. Items developed specifically to Customer shall also be the property of TMS.
- 10.2 Notwithstanding the foregoing, when payment for the Products and/or Services has been effected, TMS will grant to Customer and/or the Client a non-exclusive, non-transferable and time-limited right to use any technical information, including software, provided by TMS, for the purposes of the operation and maintenance of the Products delivered by TMS and for no other purpose.
- 10.3 Third-party claims contending that the Products delivered by TMS infringe a third party's intellectual property rights, will be settled or defended by TMS, and TMS will pay reasonable defence costs, settlement amounts and court-awarded damages, on the condition that Customer (i) promptly provides written notice to TMS, (ii) cooperates with TMS and follows the instructions given by TMS in the defence or settlement of the claim, and (iii) grants TMS sole control of the defence and potential settlement of the claim.
- 10.4 Should a third party claim be raised or in case that TMS finds such a claim likely to be raised, TMS is entitled to at its own choice (i) modify the Products, or (ii) replace the Products with a product of a similar kind. If neither (i) nor (ii) can be achieved after the exercise of commercially reasonable efforts, TMS may terminate the Main Agreement for the affected Product and refund to Customer all fees paid by Customer to TMS with respect to the affected Product. Upon payment of any refund, the potential license for or lease of such Product shall automatically terminate.
- 10.5 TMS will not be liable for claims of infringement arising from (i) modifications of a Product not made by TMS, (ii) compliance of the Product with any third party or Customer designs, instructions, specifications or technical information, (iii) Customer's use with products, software and services not provided by TMS, or (iv) Customer's non-compliance with instructions or specifications provided by TMS.
- 10.6 This clause 10 shall not apply for any claims brought on the basis of software patents issued in the United States of America, for which Customer bears the sole risk.
- 10.7 This section 10 is exclusive and sole as regards TMS' liability for claims of intellectual property infringement.



11. CONFIDENTIALITY

- 11.1 All Proprietary Information issued by the Disclosing Party to the Receiving Party shall be kept confidential and may not be disclosed, distributed or communicated, directly or indirectly, in whole or in part, to any third party without the Disclosing Party's prior written consent. However, the Receiving Party is entitled to disclose Proprietary information to its Authorised Representatives, its Affiliates and co-ventures, its Subcontractors and its Client to the extent that such disclosure is necessary for the performance of the scope of work under a Main Agreement. If Proprietary Information is disclosed to such third party, the Disclosing Party undertakes only to disclose any Proprietary Information on terms equivalent to this confidentiality provision and to use reasonable efforts to procure that said third party observes this confidentiality provision. The Disclosing Party is responsible for any breach of this confidentiality provision by any of its Authorised Representatives, its Affiliates and co-ventures, its Subcontractors and its Client, to whom Proprietary Information has been disclosed.
- 11.2 The Receiving Party may use the Proprietary Information only for the purpose of executing a Main Agreement and associated developments. Proprietary Information may not be used by the Receiving Party for any other purpose whatsoever. In addition, the Receiving Party is obliged to keep Proprietary Information secure and protected against theft, damage, loss or unauthorized access, and to ensure that this obligation is also observed by its Authorised Representatives, its Affiliates and co-ventures, its Subcontractors and its Client, to whom Proprietary Information has been disclosed. This also includes an obligation to preserve the secrecy of know-how and other information concerning the Products and system design, the development, trade secrets and business affairs of the Disclosing Party.
- 11.3 There shall be no obligation to preserve the confidentiality or be restricted in the use of information which
- is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party contrary to this confidentiality provision,
 - is or becomes available to the Receiving Party from a source other than the Disclosing Party which is not known by the Receiving Party to be prohibited from disclosing such information,
 - was in the Receiving Party's lawful possession before being disclosed by the Disclosing Party, or
 - is developed by the Receiving Party independent from any Proprietary Information of the Disclosing Party.
- 11.4 The Receiving Party shall acquire no rights whatsoever to or in Proprietary Information disclosed to it by the Disclosing Party. All documents containing Proprietary Information shall be returned to the Disclosing Party immediately on expiry or termination of a Main Agreement or at the request of the Disclosing Party.
- 11.5 In the event the Receiving Party is under a legal obligation or have been requested by governmental authority to disclose any Proprietary Information, the Receiving Party shall promptly (and to the extent reasonable practicable and permitted by law) notify the Disclosing Party so that the Disclosing Party can seek appropriate means to protect the confidentiality of its Proprietary Information. Notwithstanding the absence of such means, if, in the opinion of the Receiving Party's counsel the Receiving Party is compelled to disclose such Proprietary Information, the Receiving Party may disclose only the Proprietary Information that is required without liability hereunder.
- 11.6 The Receiving Party accepts full liability for the maintenance of the confidentiality of the Proprietary Information and hereby agrees to indemnify the Disclosing Party against any and all losses, damages, liabilities, costs, and expenses suffered or incurred by the Disclosing Party (including without limitation legal fees and costs reasonably and properly incurred) as a result of the Receiving Party's breach of its undertakings contained in the confidentiality provision.



12. LIABILITIES

- 12.1 The liabilities for the Parties are subject to the general rule of Danish Law unless otherwise agreed.
- 12.2 TMS is not liable for delays and defects attributable to Customer's circumstances, including (i) delays and defects caused by lack of information and/or wrongful information from Customer, (ii) Customer's (and/or other suppliers or third parties associated with Customer) delay, (iii) Customer's use of the Products and/or Services in a way different to the expected use, (iv) computer viruses, hacking, Trojans, and spyware, and (v) conditions caused by Customer's or other suppliers' IT breakdowns.
- 12.3 In the event of Customer's (and/or other suppliers or third parties associated with Customer) delay, TMS' delivery time is postponed for a period corresponding to the period of Customer's (and/or other suppliers or third parties associated with Customer) delay. In other events mentioned in clause 12.2, TMS' delivery time is postponed for a reasonable period.
- 12.4 If TMS' scope of work includes the utilization or incorporation of materials or products supplied by Customer, Customer shall have the sole responsibility of ensuring such items are free from defects and discrepancies and Customer shall indemnify TMS against all losses or damages it may suffer as a result of a defective or non-conforming product supplied by Customer.

13. LIMITATION OF LIABILITY

- 13.1 In no event, no matter the circumstances, neither Party shall be responsible or liable to the other Party for indirect or consequential loss or damage, including but not limited to loss of contracts, loss of profits, loss of production, loss of data, or loss of goodwill, or loss caused by virus or hacker attack.
- 13.2 In no event, no matter the circumstances, and notwithstanding any other provision to the contrary, TMS' total aggregate liability for any and all losses arising out of or in connection with TMS' delivery of Products and/or Services or Customers use of the deliveries, whether under contract or at law, shall under no circumstances exceed 100% of the purchase price paid by Customer under the Main Agreement in question.
- 13.3 TMS is only responsible for product liability according to applicable statutory requirements.

14. NO RIGHT TO SET-OFF

- 14.1 In the event of a dispute between the Parties, the Customer shall not be entitled to withhold any payment due to TMS as set off against disputes.

15. FORCE MAJEURE

- 15.1 Neither Party shall be responsible for any failure to fulfil any term or condition of Main Agreement if and to the extent that such unfulfillment is - directly or indirectly - caused by a force majeure situation, which has been notified in accordance clause 15.3 and which is beyond the control and without the fault or negligence of the Party affected and which, by the exercise of reasonable diligence, the said Party is unable to provide against.
- 15.2 Force majeure situations include riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, ionising radiation's or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic



speeds, earthquake, flood, fire, explosion and/or other natural physical disaster. Strikes at a national or regional level or industrial disputes at a national or regional level or strikes or industrial disputes by labor not employed by the affected Party, its subcontractors, or its sellers and which affect a substantial or essential portion of the work, Maritime or aviation disasters. Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.

- 15.3 In the event of a force majeure situation, the Party that is or may be delayed shall (to the extent reasonable practicable) notify the other Party without delay giving the full particulars thereof and shall use all reasonable endeavors to remedy the situation without delay. Following notification of a force majeure situation in accordance with this clause, the Parties shall meet without delay with the purpose of agreeing a mutually acceptable course of action to minimize any effects of such occurrence.

16. TERMINATION FOR CAUSE

- 16.1 Either Party is entitled to terminate a concluded Main Agreement with immediate effect

- a) if the other Party is in material breach of the Main Agreement (including its appendices), and, provided that the breach is capable of remedy, such material breach has not been remedied within [30 days] of receipt of a written notice from the non-breaching Party to do so;
- b) if the other Party is in material breach of the Main Agreement (including its appendices) which breach is not capable of remedy; or
- c) in the event that bankruptcy proceedings are commenced against the other Party, subject to the right of the bankruptcy estate to become a party to the Agreement as provided for in the Danish Bankruptcy Act.

- 16.2 Any termination under clause 16.1 is effective from the termination date ("*ex nunc*"). In case of termination, TMS thus has an enforceable right to payment for the work already performed until the termination date, including for Products and/or Services already completed in accordance with a Main Agreement and/or delivered at the termination date, including reimbursement of all costs paid plus a reasonable margin determined by TMS.

17. INSOLVENCY OF CUSTOMER

- 17.1 In case of insolvency of Customer, TMS is, with respect for the Danish Bankruptcy Act and without prejudice to any other right or remedy available, entitled to cancel a Main Agreement or suspend any further deliveries under a Main Agreement without any liability to TMS, and if the Products and/or Services have been delivered by TMS but not paid for, the purchase price shall immediately become due notwithstanding any previous agreement or arrangement to the contrary. In addition, TMS is entitled to repossess any Products, for which Customer has not yet paid.

- 17.2 The above clause 17.1 shall apply if

- a) Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order, goes bankrupt, is placed in reconstruction, is under compulsory dissolution;
- b) a creditor takes possession of the property or assets of Customer;
- c) Customer ceases, or threatens to cease, to carry on business; or
- d) TMS reasonably apprehends that any of the events mentioned above is about to occur in relation to Customer and notifies Customer accordingly.



18. ASSIGNMENT AND SUBCONTRACTORS

- 18.1 The rights and obligations under a Main Agreement (including its appendices) of either Party may not be assigned without the other Party's prior written consent.
- 18.2 TMS may engage subcontractors to assist in the performs of the Services, the delivery of the Products and other obligations under a Main Agreement. TMS shall remain liable, however, for such subcontractors' work as if the work was performed by TMS itself.

19. CHANGES OR AMENDMENTS

- 19.1 Any amendments to a Main Agreement, these General Terms and Conditions, and any Product-Specific Terms must be agreed in writing between TMS and Customer.
- 19.2 No deviation from a Main Agreement, these General Terms and Conditions and any Product-Specific Terms will be valid unless agreed in writing, and any conflicting terms or conditions of Customer differing from these General Terms and Conditions or any Product-Specific Terms are not acknowledged by TMS, unless explicitly agreed in writing.

20. MISCELLANEOUS

20.1 Language

- 20.1.1 The ruling language of the Main Agreement (including its appendices) is English.
- 20.1.2 All reports, communications, correspondence, drawings, specifications, and calculations shall be in English.

20.2 Non-waiver

- 20.2.1 None of the terms and conditions of these General Terms and Conditions and/or of any Product-Specific Terms shall be considered to be waived by either Party unless a waiver is given in writing. No waiver given shall constitute a waiver of any past or future default, breach or modification of the terms, provisions, conditions, or covenants unless expressly set forth in such waiver.
- 20.2.2 No failure to enforce any of the terms and conditions of these General Terms and Conditions and/or of any Product-Specific Terms shall constitute a waiver of such terms and conditions.

20.3 Independent clauses

- 20.3.1 If any provision of a Main Agreement, these General Terms, and Conditions or any Product-Specific Terms shall be held to be invalid or unenforceable by any court or legal entity having jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of said Main Agreement or terms.

20.4 Survival

All provisions relating to confidentiality, intellectual property rights, limitations of liability, disclaimers of warranties, and governing law and jurisdiction in the Main Agreement, the General Terms and Conditions and any of the Product-Specific Terms applicable shall survive termination. Such termination shall not affect or prejudice either party's rights accrued at the date of termination.



20.5 Incoterms 2010

20.5.1 To the extent that a question is not governed by these Standard Terms and Conditions or any Product-Specific terms, INCOTERMS 2010 will apply, if TMS has referenced an INCOTERM.

20.5.2 In the event of any discrepancy between INCOTERMS 2010 and any provision in these Standard Terms and Conditions or in any Product-Specific Terms, the General Terms and Conditions and/or the Product-Specific Terms shall prevail.

21. GOVERNING LAW AND JURISDICTION

21.1 Any Main Agreement (including its appendices and these General Terms and Conditions) shall be construed and governed in accordance with the laws of Denmark.

21.2 Any dispute arising out of or in connection with a Main Agreement (including its appendices and these General Terms and Conditions), including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The arbitral tribunal shall be composed of three arbitrators. The Parties agree that all three arbitrators (including the president of the arbitral tribunal) may be of the same nationality and be domiciled in the same country, including the same country as TMS. The place of arbitration shall be Copenhagen, Denmark. The language to be used in the arbitral proceedings shall be English.



SOFTWARE LICENSE TERMS

1. GENERAL

- 1.1 These software license terms ("License Terms") specifies the contractual terms and conditions for Customer's purchase of a perpetual (subject to these License Terms) license to use the Software.
- 1.2 These License Terms constitute an appendix to, and an integral part of the Main Agreement entered into between TMS and Customer.
- 1.3 In addition to these License Terms applicable to TMS' licensing of the Software to Customer, the General Terms and Conditions will apply to the general relationship between TMS and Customer. In the event of any discrepancy between these License Terms and the General Terms and Conditions, these License Terms shall prevail. The definitions used in the Standard Terms and Conditions shall, however, apply to these License Terms as well.

2. DEFINITIONS

- 2.1 These License Terms inherit the definitions set out in the General Terms and Conditions applicable to the Main Agreement.

3. THE SAFEPILOT SOFTWARE AND MODULES

- 3.1 Subject to the terms and conditions of these License Terms and the payment of all applicable license fees, TMS shall deliver the Software to Customer as specified in the Main Agreement. Customer's potential access to current updates to the Software is specified in the Main Agreement as well.
- 3.2 Subject to the Main Agreement concluded between the Parties, Customer may from time to time choose to configure the Software with different modules developed and made available by TMS adding extra functionality to the Software. The modules available are described in separate datasheets available at request.
- 3.3 The current prices of each of the above modules are stated in the Main Agreement.
- 3.4 The Customer may choose to add one or more modules to the Software subject to one month's prior written notice from Customer to TMS available at the end of a month. The license fee will be invoiced in accordance with the terms of the Main Agreement, including additional applicable terms at the current rate for the chosen modules at the time when notice is given.

4. GRANT OF LICENSE

- 4.1 When payment of all applicable license fees has been effected in full, TMS grants to Customer a non-exclusive, perpetual (subject to and save as set out in these License Terms), non-transferrable and limited right to use the Software with the following limitations: (a) each license may only be used by a single end-user with one unique log-in; and (b) the Software may be used only for its designated purposes.
- 4.2 Customer may not distribute copies of the Software to third parties or reverse engineer, decompile, or disassemble any of the Software's components, except and only to the extent permitted by applicable law without the possibility of contractual waiver.



4.3 In connection with the use of the Software by an Affiliate of the Customer, Customer hereby agrees to: (i) make each such Affiliate aware of the terms of the Main Agreement (exhibits included); (ii) monitor each such Affiliate's compliance with the terms contained in the Main Agreement (exhibits included) and the Documentation; and (iii) remain responsible and liable to TMS for all violations of the terms contained in the Main Agreement (exhibits included) and the Documentation by any such Affiliate. Upon request by TMS, Customer agrees to confirm the Affiliate status of a particular entity. An Affiliate of Customer is permitted to use the Software only for so long as such entity is an Affiliate as defined in the General Terms and Conditions.

5. LICENSE FEES AND PAYMENT

5.1 Customer's payment to TMS consists of a license fee for the Software. The applicable license fee, depending on the modules chosen by Customer, is set out in the Main Agreement.

6. LIMITED WARRANTY AND REMEDIES

6.1 To the extent permitted by law, TMS warrants that the Software within the warranty period specified in the Main Agreement will perform substantially in accordance with the Documentation when operated in accordance with the Documentation including all software and/or hardware system requirements referenced therein.

6.2 Customer must report any alleged non-conformity of the warranty contained in clause 6.1 to TMS. TMS shall have no liability for breach of the warranty provision in clause 6.1 unless Customer has notified TMS of such breach within the warranty period.

6.3 If no Extended Warranty Period is specified in the Main Agreement, the warranty period shall be twelve (12) months from delivery of the Software.

6.4 TMS will have no liability to Customer in respect of the warranty pursuant to clause 6.1 for any claim that: (i) arises out of any unauthorized use, reproduction or distribution of the Software by Customer; (ii) arises out of any modification or alteration of the Software without the written approval of TMS; (iii) arises out of the use of the Software in combination with any other software or equipment not supported by the Software; or (iv) would have been avoided by use of any updates to the Software made available to Customer.

6.5 TMS does not warrant that: (i) the Software will meet Customer's requirements; (ii) the Software will operate in combination with other hardware or software, except as expressly specified in the Documentation; or (iii) the operation of the Software will be uninterrupted or error-free.

6.6 Except for the express warranties stated in clause 6.1 and to the maximum extent permitted by law, the Software is provided "as is" in accordance with the then-current product description, and TMS disclaims all other warranties, conditions, and other terms, whether express or implied.

6.7 Notwithstanding any other provision to the contrary, TMS' liability in the event of non-conformity of the warranty contained in clause 6.1 discovered during the warranty period is limited to repair or replacement of the defective Software in accordance with clause 7.1.

7. RIGHT OF REMEDY

7.1 Customer's exclusive remedy and TMS' sole liability with regard to a breach of the warranty contained in clause 6.1 shall be, at TMS' option and expense, to either: (i) repair or replace the non-conforming Software within a reasonable time; or (ii) facilitate the refund to Customer of license fees paid to TMS for the non-conforming Software.



Remedy within 30 days shall always be considered reasonable time. If TMS elects to facilitate the return of the applicable license fees paid for the non-conforming Software, the license in respect hereof shall automatically terminate.

8. DATA PROCESSING, DIAGNOSTIC AND USAGE DATA

- 8.1 TMS' processing of personal data on behalf of Customer is carried out pursuant to schedule 1.
- 8.2 TMS may collect, maintain, process and use diagnostic, technical, usage and related information, including information about the end user's devices, system and application software and peripherals that is gathered periodically to facilitate the provision of Software and to verify compliance with the terms of the Main Agreement.
- 8.3 TMS may use such information to provide and improve TMS' Software as long as it is collected anonymously in a form not personally identifying Customer or Customer's end users.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 No intellectual property rights are transferred by either party to the other party. The Software and any online benefits provided by TMS (e.g. tools) confers no title or ownership and is not a sale of any rights in the software. All rights not expressly granted are reserved by TMS. Reference is also made to the regulation of intellectual property rights in the General Terms and Conditions.

10. TERM AND TERMINATION

10.1 Term

- 10.1.1 The license period shall commence on the date specified in the Main Agreement concluded between the Parties.

10.2 Termination

- 10.2.1 The license granted is perpetual, and the licensing agreed in the Main Agreement is, therefore, unless otherwise agreed, non-terminable by both Parties.
- 10.2.2 Each Party is however entitled to terminate the concluded Main Agreement for cause according to the General Terms and Conditions.

10.3 Legal effect of termination

- 10.3.1 Upon termination of the Main Agreement, the license shall lapse, and any right of Customer to use the Software shall immediately cease. Termination of the Main Agreement will however not affect any payments due or payments already made.



SCHEDULE 1 - PROCESSING OF PERSONAL DATA

1. BACKGROUND

- 1.1 Customer ("Data Controller") and TMS ("Data Processor") has entered into the Main Agreement under which Data Processor will be processing personal data on behalf of Data Controller.
- 1.2 Applicable Data Protection Legislation (as defined below) requires that a written contract be entered into between a data controller and data processor, who processes personal data on behalf of the data controller, governing the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the data controller. Accordingly, the Parties have entered into this Data Processing Agreement (as defined below).
- 1.3 The Main Agreement and the Data Processing Agreement are interdependent and cannot be terminated separately.
- 1.4 In the event of any inconsistency between the contents of the Main Agreement and the Data Processing Agreement in relation to data protection obligations, the Data Processing Agreement will prevail irrespective of any previous agreements between the Parties.

2. DEFINITIONS

- 2.1 Terms defined in the Main Agreement shall have the same meaning when used in this Data Processing Agreement, unless otherwise expressly stated herein.
- 2.2 In this Data Processing Agreement, unless the context otherwise requires:
 1. "Main Agreement" has the meaning ascribed to it in clause 1.1.
 2. "Data Processing Agreement" means this data processing schedule.
 3. "Data Protection Legislation" means all the laws and rules governing the processing and protection of personal data throughout the European Economic Area (EEA) as amended, supplemented and/or modified from time to time, including the General Data Protection Regulation (as defined below), relevant national legislation and, where relevant, the guidelines and rules issued by the Danish Data Protection Agency or other competent supervisory authorities in the EEA (including the national supervisory authorities).
 4. "General Data Protection Regulation" means "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" as amended, supplemented and/or modified from time to time.
 5. "Services" means the services and supplies provided by Data Processor as the provider to Data Controller as customer under the Main Agreement.
- 2.3 The terms "personal data", "special categories of personal data", "process/processing", "controller", "processor", "data subject", "supervisory authority", "pseudonymisation", "technical and organisational measures" and "personal data breach" as used in this Data Processing Agreement shall be understood in accordance with the Data Protection Legislation, including the General Data Protection Regulation.



3. PROCESSING OF PERSONAL DATA

- 3.1 Data Processor shall process personal data on behalf of Data Controller in accordance with the Data Protection Legislation.
- 3.2 **Data Controller's instructions:** The Data Processor will record, store, organize, transmit and erase GPS information about the user of the SafePilot software.
- 3.3 Data Processor may only process the personal data on documented instructions from Data Controller, unless required to do so pursuant to mandatory European Union rules and regulation or mandatory member state law to which Data Processor is subject. In that case, Data Processor must notify Data Controller of such legal requirement before the processing, unless the relevant law prohibits such notification on important grounds of public interest.
- 3.4 Data Processor must ensure that the persons involved in the processing of personal data on behalf of Data Controller under the Data Processing Agreement have either committed themselves to confidentiality or are subject to a proper statutory duty of confidentiality and that they only process personal data in compliance with the Main Agreement, the Data Processing Agreement, and the Data Protection Legislation.
- 3.5 Data Processor shall take the necessary steps to ensure that any person acting under the authority of Data Processor, and who has access to the personal data, does not process such personal data except on documented instructions from Data Controller.
- 3.6 Data Processor shall, upon request from Data Controller, provide access to all necessary information in order for Data Controller to ensure compliance with the obligations laid down in the Data Protection Legislation. Furthermore, Data Processor must allow and contribute to any audits, including inspections, conducted by Data Controller or an auditor authorized by Data Controller. Data Processor is entitled to receive separate compensation in this regard.
- 3.7 Data Processor must immediately notify Data Controller if, in Data Processor's opinion, an instruction from Data Controller is contrary to the Data Protection Legislation.

4. SECURITY MEASURES

- 4.1 Taking into account the state of art, the costs of implementation and the nature, scope, context and purposes of the processing as well as risk of varying likelihood and severity of the rights and freedoms of natural persons, Data Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk.
- 4.2 Data Processor shall assist Data Controller by appropriate technical and organizational measures with the fulfillment of Data Controller's obligation to respond to requests for exercising the data subject's rights as laid down in the Data Protection Legislation. Data Processor shall be compensated for the time devoted in relation to the assistance with responses to requests regarding the data subject's rights.
- 4.3 Data Processor shall notify Data Controller without undue delay after becoming aware of a personal data breach. Furthermore, Data Processor shall assist Data Controller in ensuring compliance with Data Controller's obligations (i) to document any personal data breach, (ii) to notify the applicable supervisory authority of any personal data breach, and (iii) to communicate such personal data breaches to the applicable data subjects in accordance with Articles 33 and 34 of the General Data Protection Regulation.



5. SUB-PROCESSING

5.1 By signing this Data Processing Agreement, Data Controller agrees that Data Processor may engage Sub-Contractors to assist in providing the Services. The sub-contractors currently engaged in processing personal data (hereinafter referred to as Sub-Processors) and the countries and facilities in which the personal data is processed, are as follows:

Name, reg. no. and address	Processing description	Processing locations
Amazon Web Services, Inc. Seattle (WA), USA	Hosting	EU, USA (only if you are a customer in the USA)

5.2 Any additions and/or changes to the list above will be notified to Data Controller no less than 14 calendar days before the contemplated sub-processing is put into effect. If Data Controller wishes to object to the sub-processing, Data Controller shall state so in writing within 7 calendar days of receiving the before mentioned notification. Data Controller's objection must be specific and justifiable. Absence of any objections from Data Controller shall be considered as a consent to the sub-processing.

5.3 Data Processor shall ensure that the sub-processing is lawful and that any and all Sub-Processors undertake and are subject to the same terms and obligations as Data Processor as set out herein.

5.4 Data Processor warrants the legality of its Sub-Processors' processing of personal data. Data Processor shall remain responsible for all acts and omissions of its Sub-Processors, and the acts and omissions of those employed or engaged by Sub-Processors, as if such acts and omissions were performed by Data Processor itself.

6. TRANSFERS OF PERSONAL DATA TO A THIRD COUNTRY

By signing this Data Processing Agreement, Data Controller accepts that Data Processor may transfer personal data to a third country, i.e. a country outside the EEA. Data Processor will be required to ensure that such transfer is at all times lawful, including i.e. that there is an adequate level of protection of the transfer of the personal data.

7. DATA PROCESSOR'S GENERAL OBLIGATIONS

7.1 Data Processor shall apply and comply with the Data Protection Legislation and shall not perform its obligations under the Main Agreement and the Data Processing Agreement in such a way as to cause Data Controller to breach any of its obligations under applicable Data Protection Legislation.

7.2 Data Processor must assist Data Controller in ensuring compliance with any of Data Controller's obligations pursuant to the Data Protection Legislation, including for instance obligations pursuant to Article 35 (Data protection impact assessment) and Article 36 (Prior consultation) of the General Data Protection Regulation. Data Processor is entitled to receive separate compensation regarding such assistance and the specific compensation will be

8. LIABILITY

8.1 Data Processor shall only be liable for the damage caused by the processing of personal data where Data Processor has not complied with obligations of the Data Protection Legislation that are specifically directed to data processors or where Data Processor has acted outside or contrary to lawful instructions of Data Controller. Data Processor's total liability towards Data Controller arising from breach of this Data Processing Agreement is subject to the limitations on liability set out in clause 13 of the General Terms and Conditions applicable to the Main Agreement.



9. TERMINATION

9.1 This Data Processing Agreement shall automatically terminate upon any termination or expiration of the Main Agreement.

9.2 The Parties agree that at the termination or expiry of the Main Agreement and/or the Data Processing Agreement, Data Processor shall, at the choice of Data Controller, (i) return all data processed under the Main Agreement and/or the data Processing Agreement and any copies thereof to Data Controller, or (ii) delete all data processed under the Main Agreement and the Data Processing Agreement and certify to Data Controller that this has been done, including for avoidance of doubt delete such data from any computer, server, and/or any other storage device or media, unless European Union and/or member state law requires storage of such personal data.

10. JURISDICTION AND CHOICE OF LAW

This Data Processing Agreement shall be governed by Danish law. Any disputes arising out of or in connection with the provisions of this Data Processing Agreement shall be resolved in the manner set out in clause 21 of the General Terms and Conditions applicable to the Main Agreement.



SOFTWARE SUBSCRIPTION TERMS

1. GENERAL

- 1.1 These software subscription terms ("**Subscription Terms**") specifies the contractual terms and conditions for Customer's purchase of a subscription to the Software.
- 1.2 These Subscription Terms constitute an appendix to, and an integral part of the Main Agreement entered into between TMS and Customer.
- 1.3 In addition to these Subscription Terms applicable to Customers' subscription to the Software from TMS, the General Terms and Conditions will apply to the general relationship between TMS and Customer. In the event of any discrepancy between these Subscription Terms and the General Terms and Conditions, these Subscription Terms shall prevail. The definitions used in the Standard Terms and Conditions shall, however, apply to these Subscription Terms as well.

2. DEFINITIONS

- 2.1 These Subscription Terms inherit the definitions set out in the General Terms and Conditions applicable to the Main Agreement.

3. THE SAFEPILOT SOFTWARE AND MODULES

- 3.1 Subject to the terms and conditions of these Subscription Terms and the payment of all applicable subscription fees, TMS shall deliver the Software to Customer and provide Customer with access to updates to the Software as they are released as specified in the Main Agreement.
- 3.2 Subject to the Main Agreement concluded between the Parties, Customer may from time to time choose to configure the Software with different modules developed and made available by TMS adding extra functionality to the Software. The modules available are described in separate datasheets available at request.
- 3.3 The current prices of each of the above modules are stated in the Main Agreement.
- 3.4 Should Customer wish to add one or more modules to the Software within an active Recurring Period, Customer shall notify TMS no later than 5 days before automatic renewal of the subscription if the modules are to be implemented and made available in the Software in the next Recurring Period. If notification is made later than 5 days before automatic renewal, TMS may still choose to implement and make available the requested modules in the next Recurring Period but is not obliged hereto.
- 3.5 Should Customer wish to remove one or more modules to the Software within an active Recurring Period, Customer shall notify TMS no later than 10 days before automatic renewal of the subscription if the modules are to be removed from the Software in the next Recurring Period. If notification is made later than 10 days before automatic renewal, TMS may still choose to remove the requested modules in the next Recurring Period but is not obliged hereto.



4. GRANT OF LICENSE

- 4.1 TMS provides to Customer a subscription-based license to the Software. When payment of all applicable subscription fees has been effected in full, TMS grants to Customer a non-exclusive, subscription-based, time-limited, non-transferrable and limited right to use the Software with the following limitations: (a) each subscription may only be used by a single end-user with one unique log-in; and (b) the Software may be used only for its designated purposes.
- 4.2 Customer may not distribute copies of the Software to third parties or reverse engineer, decompile, or disassemble any of the Software's components, except and only to the extent permitted by applicable law without the possibility of contractual waiver.
- 4.3 In connection with the use of the Software by an Affiliate of Customer, Customer hereby agrees to: (i) make each such Affiliate aware of the terms of the Main Agreement (exhibits included); (ii) monitor each such Affiliate's compliance with the terms contained in the Main Agreement (exhibits included) and the Documentation; and (iii) remain responsible and liable to TMS for all violations of the terms contained in the Main Agreement (exhibits included) and the Documentation by any such Affiliate. Upon request by TMS, Customer agrees to confirm the Affiliate status of a particular entity. An Affiliate of Customer is permitted to use the Software only for so long as such entity is an Affiliate as defined in the General Terms and Conditions.

5. SUBSCRIPTION FEES AND PAYMENT

- 5.1 Unless otherwise agreed, Customer's payment to TMS consists of a subscription fee for the Software, which shall be paid in advance for the Recurring Period. The applicable subscription fee, depending on the type of subscription and modules chosen by Customer, is set out in the Main Agreement.

6. LIMITED WARRANTY AND REMEDIES

- 6.1 To the extent permitted by law, TMS warrants that the Software within the warranty period specified in the Main Agreement will perform substantially in accordance with the Documentation when operated in accordance with the Documentation including all software and/or hardware system requirements referenced therein.
- 6.2 Customer must report any alleged non-conformity of the warranty contained in clause 6.1 to TMS. TMS shall have no liability for breach of the warranty provision in clause 6.1 unless Customer has notified TMS of such breach within the warranty period.
- 6.3 The warranty period will expire at the same time as the expiry of the subscription period.
- 6.4 TMS will have no liability to Customer in respect of the warranty pursuant to clause 6.1 for any claim that: (i) arises out of any unauthorized use, reproduction or distribution of the Software by Customer; (ii) arises out of any modification or alteration of the Software without the written approval of TMS; (iii) arises out of the use of the Software in combination with any other software or equipment not supported by the Software; or (iv) would have been avoided by use of any updates to the Software made available to Customer.
- 6.5 TMS does not warrant that: (i) the Software will meet Customer's requirements; (ii) the Software will operate in combination with other hardware or software, except as expressly specified in the Documentation; or (iii) the operation of the Software will be uninterrupted or error-free.



6.6 Except for the express warranties stated in clause 6.1 and to the maximum extent permitted by law, the Software is provided "as is" in accordance with the then-current product description, and TMS disclaims all other warranties, conditions, and other terms, whether express or implied.

6.7 Notwithstanding any other provision to the contrary, TMS' liability in the event of non-conformity of the warranty contained in clause 6.1 discovered during the warranty period is limited to repair or replacement of the defective Software in accordance with clause 7.1

7. RIGHT OF REMEDY

7.1 Customer's exclusive remedy and TMS' sole liability with regard to a breach of the warranty contained in clause 6.1 shall be, at TMS' option and expense, to either: (i) repair or replace the non-conforming Software within a reasonable time; or (ii) facilitate the refund to Customer of subscription fees paid to TMS for the non-conforming Software. Remedy within 30 days shall always be considered reasonable time. If TMS elects to facilitate the return of the applicable subscription fees paid for the non-conforming Software, the license in respect hereof shall automatically terminate.

8. DATA PROCESSING, DIAGNOSTIC AND USAGE DATA

8.1 TMS' processing of personal data on behalf of Customer is carried out pursuant to schedule 1.

8.2 TMS may collect, maintain, process and use diagnostic, technical, usage and related information, including information about the end user's devices, system and application software and peripherals that is gathered periodically to facilitate the provision of Software and to verify compliance with the terms of the Main Agreement.

8.3 TMS may use such information to provide and improve TMS' Software as long as it is collected anonymously in a form not personally identifying Customer or Customer's end users.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 No intellectual property rights are transferred by either party to the other party. The Software and any online benefits provided by TMS (e.g. tools) confers no title or ownership and is not a sale of any rights in the software. All rights not expressly granted are reserved by TMS. Reference is also made to the regulation of intellectual property rights in the General Terms and Conditions.

10. TERM AND TERMINATION

10.1 Term

10.1.1 The subscription period shall commence on the date specified in the Main Agreement concluded between the Parties.

10.1.2 Unless otherwise agreed, the Software is provided on a monthly subscription that is automatically renewed unless terminated by either Party as set forth below.

10.2 Termination

10.2.1 Customer may, unless otherwise agreed between the Parties, terminate the subscription agreed in the Main Agreement for convenience with 6 months' prior written notice before the automatically renewal.



- 10.2.2 TMS may terminate the subscription agreed in the Main Agreement for convenience with 1 months' prior written notice before the automatically renewal.
 - 10.2.3 Notwithstanding clause 10.2.1 and 10.2.2 above, if the Main Agreement contains both an agreement regarding subscription of software and lease of hardware, the provisions regarding termination in the Lease Terms shall prevail and apply for the termination of the subscription of software as well.
 - 10.2.4 Each Party is entitled to terminate the concluded Main Agreement for cause according to the General Terms and Conditions.
- 10.3 Legal effect of termination**
- 10.3.1 Upon expiration or termination of the Main Agreement, the license shall lapse, and any right of Customer to use the Software shall immediately cease. Termination of the Main Agreement will however not affect any payments due or payments already made.



SCHEDULE 1 - PROCESSING OF PERSONAL DATA

1. BACKGROUND

- 1.1 Customer ("Data Controller") and TMS ("Data Processor") has entered into the Main Agreement under which Data Processor will be processing personal data on behalf of Data Controller.
- 1.2 Applicable Data Protection Legislation (as defined below) requires that a written contract be entered into between a data controller and data processor, who processes personal data on behalf of the data controller, governing the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the data controller. Accordingly, the Parties have entered into this Data Processing Agreement (as defined below).
- 1.3 The Main Agreement and the Data Processing Agreement are interdependent and cannot be terminated separately.
- 1.4 In the event of any inconsistency between the contents of the Main Agreement and the Data Processing Agreement in relation to data protection obligations, the Data Processing Agreement will prevail irrespective of any previous agreements between the Parties.

2. DEFINITIONS

- 2.1 Terms defined in the Main Agreement shall have the same meaning when used in this Data Processing Agreement, unless otherwise expressly stated herein.
- 2.2 In this Data Processing Agreement, unless the context otherwise requires:
 1. "Main Agreement" has the meaning ascribed to it in clause 1.1.
 2. "Data Processing Agreement" means this data processing schedule.
 3. "Data Protection Legislation" means all the laws and rules governing the processing and protection of personal data throughout the European Economic Area (EEA) as amended, supplemented and/or modified from time to time, including the General Data Protection Regulation (as defined below), relevant national legislation and, where relevant, the guidelines and rules issued by the Danish Data Protection Agency or other competent supervisory authorities in the EEA (including the national supervisory authorities).
 4. "General Data Protection Regulation" means "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" as amended, supplemented and/or modified from time to time.
 5. "Services" means the services and supplies provided by Data Processor as the provider to Data Controller as customer under the Main Agreement.
- 2.3 The terms "personal data", "special categories of personal data", "process/processing", "controller", "processor", "data subject", "supervisory authority", "pseudonymisation", "technical and organisational measures" and "personal data breach" as used in this Data Processing Agreement shall be understood in accordance with the Data Protection Legislation, including the General Data Protection Regulation.



3. PROCESSING OF PERSONAL DATA

- 3.1 Data Processor shall process personal data on behalf of Data Controller in accordance with the Data Protection Legislation.
- 3.2 **Data Controller's instructions:** The Data Processor will record, store, organize, transmit and erase GPS information about the user of the SafePilot software.
- 3.3 Data Processor may only process the personal data on documented instructions from Data Controller unless required to do so pursuant to mandatory European Union rules and regulation or mandatory member state law to which Data Processor is subject. In that case, Data Processor must notify Data Controller of such legal requirement before the processing, unless the relevant law prohibits such notification on important grounds of public interest.
- 3.4 Data Processor must ensure that the persons involved in the processing of personal data on behalf of Data Controller under the Data Processing Agreement have either committed themselves to confidentiality or are subject to a proper statutory duty of confidentiality and that they only process personal data in compliance with the Main Agreement, the Data Processing Agreement and the Data Protection Legislation.
- 3.5 Data Processor shall take the necessary steps to ensure that any person acting under the authority of Data Processor, and who has access to the personal data, does not process such personal data except on documented instructions from Data Controller.
- 3.6 Data Processor shall, upon request from Data Controller, provide access to all necessary information in order for Data Controller to ensure compliance with the obligations laid down in the Data Protection Legislation. Furthermore, Data Processor must allow and contribute to any audits, including inspections, conducted by Data Controller or an auditor authorized by Data Controller. Data Processor is entitled to receive separate compensation in this regard.
- 3.7 Data Processor must immediately notify Data Controller if, in Data Processor's opinion, an instruction from Data Controller is contrary to the Data Protection Legislation.

4. SECURITY MEASURES

- 4.1 Taking into account the state of art, the costs of implementation and the nature, scope, context and purposes of the processing as well as risk of varying likelihood and severity of the rights and freedoms of natural persons, Data Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk.
- 4.2 Data Processor shall assist Data Controller by appropriate technical and organizational measures with the fulfillment of Data Controller's obligation to respond to requests for exercising the data subject's rights as laid down in the Data Protection Legislation. Data Processor shall be compensated for the time devoted in relation to the assistance with responses to requests regarding the data subject's rights.
- 4.3 Data Processor shall notify Data Controller without undue delay after becoming aware of a personal data breach. Furthermore, Data Processor shall assist Data Controller in ensuring compliance with Data Controller's obligations (i) to document any personal data breach, (ii) to notify the applicable supervisory authority of any personal data breach, and (iii) to communicate such personal data breaches to the applicable data subjects in accordance with Articles 33 and 34 of the General Data Protection Regulation.



5. SUB-PROCESSING

5.1 By signing this Data Processing Agreement, Data Controller agrees that Data Processor may engage Sub-Contractors to assist in providing the Services. The sub-contractors currently engaged in processing personal data (hereinafter referred to as Sub-Processors) and the countries and facilities in which the personal data is processed, are as follows:

Name, reg. no. and address	Processing description	Processing locations
Amazon Web Services, Inc. Seattle (WA), USA	Hosting	EU, USA (only if you are a customer in the USA)

5.2 Any additions and/or changes to the list above will be notified to Data Controller no less than 14 calendar days before the contemplated sub-processing is put into effect. If Data Controller wishes to object to the sub-processing, Data Controller shall state so in writing within 7 calendar days of receiving the before mentioned notification. Data Controller's objection must be specific and justifiable. Absence of any objections from Data Controller shall be considered as a consent to the sub-processing.

5.3 Data Processor shall ensure that the sub-processing is lawful and that any and all Sub-Processors undertake and are subject to the same terms and obligations as Data Processor as set out herein.

5.4 Data Processor warrants the legality of its Sub-Processors' processing of personal data. Data Processor shall remain responsible for all acts and omissions of its Sub-Processors, and the acts and omissions of those employed or engaged by Sub-Processors, as if such acts and omissions were performed by Data Processor itself.

6. TRANSFERS OF PERSONAL DATA TO A THIRD COUNTRY

By signing this Data Processing Agreement, Data Controller accepts that Data Processor may transfer personal data to a third country, i.e. a country outside the EEA. Data Processor will be required to ensure that such transfer is at all times lawful, including i.e. that there is an adequate level of protection of the transfer of the personal data.

7. DATA PROCESSOR'S GENERAL OBLIGATIONS

7.1 Data Processor shall apply and comply with the Data Protection Legislation and shall not perform its obligations under the Main Agreement and the Data Processing Agreement in such a way as to cause Data Controller to breach any of its obligations under applicable Data Protection Legislation.

7.2 Data Processor must assist Data Controller in ensuring compliance with any of Data Controller's obligations pursuant to the Data Protection Legislation, including for instance obligations pursuant to Article 35 (Data protection impact assessment) and Article 36 (Prior consultation) of the General Data Protection Regulation. Data Processor is entitled to receive separate compensation regarding such assistance and the specific compensation will be

8. LIABILITY

8.1 Data Processor shall only be liable for the damage caused by the processing of personal data where Data Processor has not complied with obligations of the Data Protection Legislation that are specifically directed to data processors or where Data Processor has acted outside or contrary to lawful instructions of Data Controller. Data Processor's total liability towards Data Controller arising from breach of this Data Processing Agreement is subject to the limitations on liability set out in clause 13 of the General Terms and Conditions applicable to the Main Agreement.



9. TERMINATION

- 9.1 This Data Processing Agreement shall automatically terminate upon any termination or expiration of the Main Agreement.
- 9.2 The Parties agree that at the termination or expiry of the Main Agreement and/or the Data Processing Agreement, Data Processor shall, at the choice of Data Controller, (i) return all data processed under the Main Agreement and/or the data Processing Agreement and any copies thereof to Data Controller, or (ii) delete all data processed under the Main Agreement and the Data Processing Agreement and certify to Data Controller that this has been done, including for avoidance of doubt delete such data from any computer, server, and/or any other storage device or media, unless European Union and/or member state law requires storage of such personal data.

10. JURISDICTION AND CHOICE OF LAW

This Data Processing Agreement shall be governed by Danish law. Any disputes arising out of or in connection with the provisions of this Data Processing Agreement shall be resolved in the manner set out in clause 21 of the General Terms and Conditions applicable to the Main Agreement.

MONTHLY SUBCONSULTANT MONITORING REPORT

Instructions: Please indicate the SBE/VSBE/MBE/WBE/OBE/DBE participation levels achieved for the month of _____ covered by the referenced contract number.

Contract No. _____ Division _____ Contractor Administrator _____

Contractor _____ *Group _____ Contract Title/Project _____

Contract Amount _____ Start Date _____ End Date _____

Total Amount Invoiced to Date _____

SBE Mandated Participation Percentage _____ SBE _____ VSBE _____

Proposed Subcontractor Percentage _____ MBE _____ WBE _____ OBE _____ DVBE _____

	Name of Subcontractor	Type of Work Performed	Group SBE/VSBE/MBE/WBE/OBE/DVBE	PROPOSED		ACTUALS		
				Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Directions:

Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount
 Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date
 Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

EXHIBIT B

* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE/DBE)

EXHIBIT C - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is \$25,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such Contract:

A. During the performance of a City Contract, the Contractor certifies and represents that the Contractor and each Subcontractor hereunder will adhere to an Affirmative Action Program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section applies to work or services performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. The Contractor shall post a copy of Paragraph A., hereof, in conspicuous places at its place of business available to employees and applicants for employment.

B. The Contractor shall, in all solicitations or advertisements for employees placed, by or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, the Contractor shall certify on an electronic or hard copy form to be supplied, that the Contractor has not discriminated in the performance of City Contracts against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

D. The Contractor shall permit access to, and may be required to provide certified copies of, all of its records pertaining to employment and to its employment practices by the Awarding Authority or the DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon request, to provide evidence that it has or will comply therewith.

E. The failure of any Contractor to comply with the Affirmative Action Program provisions of City Contracts may be deemed to be a material breach of a City Contract. The failure shall only be established upon a finding to that effect by the Awarding

Authority, on the basis of its own investigation or that of the DAA. No finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

F. Upon a finding duly made that the Contractor has breached the Affirmative Action Program provisions of a City Contract, the Contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the Contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the Contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City Contract, there may be deducted from the amount payable to the Contractor by the City of Los Angeles under the contract, a penalty of ten dollars for each person for each calendar day on which the person was discriminated against in violation of the provisions of a City Contract.

H. Notwithstanding any other provisions of a City Contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an Awarding Authority of the City to accomplish this contract compliance program.

J. Nothing contained in City Contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration of the Contract. The Awarding Authority may also require Contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

- (i) What steps were taken, how and on what date.
- (ii) To whom those efforts were directed.
- (iii) The responses received, from whom and when.
- (iv) What other steps were taken or will be taken to comply and when.
- (v) Why the Contractor has been or will be unable to comply.

2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the Contractor, Subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the Contractor's, Subcontractor's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and

7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Contractors engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar provision in all subcontracts awarded for work to be performed under the Contract with the City and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Contract with the City.

EXHIBIT D

SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

The Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subconsultants.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when

signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the LABAVN by the time proposals are due.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

Consultants who qualify as a Local Business Enterprise (LBE) will receive an 8% preference on any proposal for services valued in excess of \$150,000. The preference will be applied by adding 8% of the total possible evaluation points to the Consultant's score. Consultants who do not qualify as a LBE may receive a maximum 5% preference for identifying and utilizing LBE subconsultants. Consultants may receive 1% preference, up to a maximum of 5%, for every 10% of or portion thereof, of work that is subcontracted to a LBE. LBE subconsultant preferences will be determined by the percentage of the total amount of compensation proposed under the Agreement.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. Headquartered shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form will signify the LBE status of the Consultant and subconsultants.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Consultant Description Form** is true and correct and includes all material information necessary to identify and explain the operations of

Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company.

Please check all that apply. At least one box must be checked:

SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of

North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) **Local Business Preference Program:** Please indicate the Local Business Enterprise status of your company. Only one box must be checked:

LBE Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: _____

Title: _____

Printed Name: _____

Date Signed: _____

Consultant Description Form

PRIME CONSULTANT:

Contract Title: _____

Business Name: _____ LABAVN ID#: _____

Award Total: \$ _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____

Consultant Description Form

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email Address: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or \$): _____

Services to be provided: _____

Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES _____ NO _____ (Check only one)

Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____

Address: _____

City/State/Zip: _____

County: _____

Telephone: () _____ FAX: () _____

Contact Person/Title: _____

Email address: _____

EXHIBIT E

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.